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Supreme Court of the United States

OCTOBER TERM—1950

EDWIN H. STERN JR.,

Petitioner,

—v.—

TEEVAL CO. INC.,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO WRITS OF CERTIORARI

The Respondent (herein referred to as "Teeval") is the owner and landlord of a luxury apartment house at 1125 Park Avenue, New York, N. Y. There are two Petitioners for certiorari herein. The one (No. 306) is the tenant of apartment 9B in said apartment house (hereafter referred to as "the Tenant"). The other Petitioner (No. 307) is the State of New York (hereafter referred to as "the State").[1] The City of New York is filing a brief as *amicus curiae* in support of the foregoing Petitions (hereafter referred to as "the City"). This brief is submitted in opposition to the two Petitions and in response to the City's brief.

On September 27, 1949 the Federal Office of Housing Expediter acting under authority of the Housing and Rent Act of 1947 as amended in 1949 (61 Stat. 193 as amended

1 The State was represented in the Court of Appeals by the Attorney General who appeared, filed a brief and argued in support of the Constitutionality of the Statutes pursuant to Section 68 of the Executive Law of the State of New York set forth at p. 2 of the State's Petition (No. 307).

by 63 Stat. 21) hereafter referred to as "the Federal Act" increased the maximum rent for said apartment from $268.34 to $300.26 per month (R. 32-33; ff. 94-99). Local Law 73 for the year 1949 of the City of New York, amending New York City Administrative Code Section U41.7 (herein referred to as "the Sharkey Law"), enacted October 7, 1949 and effective that day prohibited the collection of this increase. The Sharkey Law was initially held unconstitutional by the Court of Appeals on State Grounds.[2]

Thereafter and on January 10, 1950 the State of New York attempted to validate the Sharkey Law by means of "Stop Gap Legislation" to remove the impediment found by the Court of Appeals (Chapter 1 Laws of 1950, State of New York, hereafter referred to as the Validating Act).[3]

Before a test of the Sharkey Law as validated could be decided by the Court of Appeals [4] the State of New York enacted its own rent control statute (Chapter 250 of the Laws of 1950 of the State of New York) to substitute effective May 1, 1950 State Rent Control for Federal Rent Control as permitted by Section 204 (j) (1) of the Federal Housing and Rent Act of 1947 as amended, *infra* (61 Stat. 193 as amended). Section 13A of this State Rent Law prohibited the enforcement by court action of any Federal increase previously barred by the Sharkey Law irrespective of invalidity of the Sharkey Law.

The Court of Appeals in the decision sought to be reviewed interpreted the Sharkey Law, the Validating Act

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2 *F. T. B. Realty Corp.* v. *Goodman*, 300 N. Y. 140 (Dec. 29, 1949).

3 The Validating Act was enacted for the period January 10, 1950 to April 30, 1950. (See Printed Text in Statutory Supplement A submitted by Teeval in its Conditional Cross-Petition No. 321.)

4 Constitutionality of the Sharkey Law as validated was argued before the Court of Appeals February 20, 1950 and reargument ordered after enactment of the State Rent Law (300 N. Y. 745).

and Section 13A of the State Rent Law and then held the State Statutes as construed by the Court, unconstitutional.[5] It is this portion of the Court of Appeals decision which Petitioners seek to review.

Opinions Below and Jurisdiction

Petitioners fairly set forth the applicable statements as to jurisdiction and correctly cite the opinions below.

Questions Presented

Petitioners do not set forth all the questions submitted to the Court of Appeals and all the questions applicable here which are:

I. The Court of Appeals construed the Sharkey Law as intending to override and defeat the Federal Act. As so construed did the Sharkey Law conflict with the Federal Act and so violate the Supremacy Clause of the U. S. Constitution?

II. Did the Sharkey Law violate the due process clause of the Fourteenth Amendment to the U. S. Constitution?

III. Did the Validating Act in its retrospective operation violate the due process clause of the Fourteenth Amendment to the U. S. Constitution?

IV. The Court of Appeals has ruled that under New York law, state courts have no power to revise the operations of a federal agency. Did the Court of Appeals correctly rule that the legislature had no power to enact

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5 The Court of Appeals in its decision upheld the balance of the State Rent Law, and that decision is the subject of this Respondent's conditional cross-petition (No. 321).

Section 13A because this constituted an attempt to revise the operations of the federal agency and violated the Supremacy Clause?

V. Did Section 13A of the State Rent Law violate the due process clause of the Fourteenth Amendment to the U. S. Constitution?

Statement

The material facts were carefully marshalled by Chief Judge Loughran in the opinion below which was unanimous (R. 48-50).[6] Petitioners' statements are, however, inadequate to present the Statutory background. For purposes of disposing of Petitioners' contentions we shall at this time refrain from submitting an amended statement but merely implement the statutory history in the course of argument *infra*.

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6 The Court of Appeals three times heard argument and considered appeals dealing with validity of the Sharkey Law: A. (*F. T. B. Realty Corp.* v. *Goodman*, 300 N. Y. 140 argued November 14, 1949 and decided December 29, 1949 to the effect that the Sharkey Law violated the Home Rule provisions of the State Constitution—see also *Leighton* v. *Jawrower* decided simultaneously therewith) B. (*F. T. B. Realty Corp.* v. *Goodman*, 300 N. Y. 745 argued Feb. 20, 1950 as to Constitutionality of the "Validated" Sharkey Law and reargument directed April 13, 1950 in light of enactment of State Rent Law—*Leighton* v. *Jawrower* argued simultaneously therewith and reargument directed) C. (*F. T. B. Realty Corp.* v. *Goodman*, 301 N. Y. 368 reargued May 31, 1950 and decided July 11, 1950 on authority of *Teeval Co. Inc.* v. *Stern*—see also *Leighton* v. *Jawrower*, 301 N. Y. 368-369 decided simultaneously therewith). The U. S. Office of Housing Expediter appeared, filed briefs and argued as *amicus curiae* in the Court of Appeals contending that the Federal Act not only pre-empted the field of rent fixing, but also that the Sharkey Law conflicted with the administration of the Federal Act. These arguments took place November 14, 1949 and Feb. 20, 1950 at a time when Federal Rent Control had not yet been supplanted by State Rent Control. Counsel for Teeval herein was counsel for F. T. B. Realty Corp. in the Court of Appeals on November 14, 1949 and Feb. 20, 1950 and for both F. T. B. Realty and Teeval on May 31, 1950. Neither the State nor Counsel for Petitioner-Tenant herein appeared in the Court of Appeals on November 14, 1949 or Feb. 20, 1950. The Corporation Counsel for the City of New York, however, appeared, argued and filed briefs as *amicus curiae* in support of the Sharkey Law on those occasions.

The Opinion of the Court of Appeals

The Court of Appeals after three times reviewing the Constitutional and Statutory Provision of the Sharkey Law (See note 6, *supra*), unanimously held as follows:

1. On the basis of the New York City Council Committee Report which recommended adoption of the Sharkey Law,[7] the Court construed the Local Law as establishing an intention to "override and defeat" the operation of the Federal Act. The Court held (R. 55):

> "The City has attempted to justify the validated Sharkey Law as (such) concurrent legislation, consistent with the Federal Act. But to our minds the above words of the City Council *unequivocally express*

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7 The Report of the New York City Council's Committee on General Welfare (301 N. Y. 346 at 364) states (R. 55):

"This Bill was introduced by the Vice Chairman, Mr. Sharkey, to correct a condition which was caused by the passage by Congress of the 1949 (Federal) Rent Control Act. Pursuant to such act the Rent Director, Tighe Wood, created a 'fair rent formula' which in the metropolitan area of New York has caused rent increases up to 50 per cent (*Ed. Note*: Official records of the Federal Agency established that a 49% increase was granted in one case of a building of 10 room apartments with average rents of $200. where one particular tenant, the producer of a successful Broadway show, had refused to give the landlord the voluntary 15% increase permitted in the Housing and Rent Act of 1947 but had spent $3600. to beautify his apartment with sound-proof walls, indirect lighting and Hollywood colors * * * The Regional Housing Expediter in an official statement refuting charges of the Sharkey Law sponsors stated in part 'There has been some criticism of increases granted under these general inequity provisions. Shouts were heard that these increases ran up to high totals—with particular reference to one increase amounting up to 49 per cent. *That one instance of a 49% increase, and comparatively* few others, resulted from the application of the law to the peculiar circumstances of the building') * * * The Bill (*i.e.* the Sharkey Law) would bar any evictions for a rental greater than that in existence on March 1, 1949, unless a certificate were procured from the City Temporary Rent Commission which would only be issued after a hearing in which both sides were represented and a finding that such increase was reasonable and fair."

an intention to override and defeat the rent fixing formula of the Federal Act." (Emphasis supplied.)

2. A Local Law which is construed as an attempt to "override and defeat" the operations of Federal Law, conflicts with the Federal Law in Violation of the Supremacy Clause (Article VI (2)), of the U. S. Constitution. The Court held (R. 55):

> "*So read,* the above quoted provisions of the validated Sharkey Law are at war with Article VI of the Federal Constitution * * * In a word so much of the Validated Sharkey Law as *undertook to forbid collection of rent increases* granted by the Federal Housing Expediter was void by operation of the Supremacy Clause of the Federal Constitution."

3. The Court specifically refrained from deciding whether the Sharkey Law was invalid for any other reasons advanced by Teeval (R. 56):

> "Whether the same provisions of the Sharkey Law were void for any other reasons we do not decide."

4. Section 13A of the State Rent Law was construed as an attempt by the State Legislature to abolish or suspend the jurisdiction of the State Courts for entertaining claims for rental arrears accruing by virtue of an Act of Congress. The Court held (R. 58):

> "The Municipal Court of the City of New York has jurisdiction to adjudicate a claim for arrears of rent (N. Y. City Municipal Court Code, #6, Subd. 1). Section 13A of the State rent control statute *attempts to abolish or at least to suspend that jurisdiction* solely in respect of claims for arrears of rent that have accrued by operation of an Act of the Congress of the United States."

5. The Court construed Section 13A as distinguishable from the Federal Portal to Portal Act, 61 Stat. 84-90, because this State Statute constituted the attempt by a State Legislature to abolish rights created by Congress. The Court held (R. 58):

> "But there is an essential difference between abolition by Congress of rights created by it and *an attempt by a State to abolish such rights.*" (Emphasis supplied.)

6. The Court held the enactment of Section 13A beyond the scope of the Legislature's power. The Court held (R. 58):

> "The power which the Legislature assumed to exercise in enacting Section 13A of the State Rent Control Statute, *does not exist*" (R. 58).

7. The Court held and construed the Statute as permitting separability between Section 13A and the balance of the Statute so that the invalidity of Section 13A did not vitiate the rest of the Law (R. 58-59).

> "But the invalidity of Section 13A of the State Rent Control Statute does not vitiate any other provision thereof. Section 13A has plainly been treated by the Legislature as a distinct and separable part of its statutory plan."

Summary of Argument

I

The Sharkey Law is unconstitutional because it violates the supremacy clause (Article VI (2)) of the U. S. Constitution.

Preliminary Statement

Since the Court of Appeals has itself construed the Sharkey Law as intending to "override and defeat" the operations of the Federal Law, no substantial question exists as to whether a law *so construed* violates the Supremacy Clause.

a. ***The Sharkey Law constitutes attempted local legislation in a field preempted by the Act of Congress.***

b. ***The Sharkey Law conflicts with the Federal Act.***

II

The Sharkey Law is unconstitutional because it violates the due process clause of the Fourteenth Amendment to the U. S. Constitution.

a. ***The Sharkey Law constitutes the arbitrary exercise of the police power.***

b. ***The Sharkey Law deprives Respondent of property without just compensation.***

III

The Validating Act is unconstitutional because it retrospectively deprives respondent of property without just compensation and thus voids the Sharkey Law.

IV

Section 13A of the state rent law is unconstitutional because it violates the supremacy clause.

Preliminary Statement as to Section 13A

Since the Court of Appeals has repeatedly held that under the New York Law, the New York Courts have no power to revise the operations of the Federal Government, the Court has voided Section 13A on State Grounds. Moreover a statute which is once construed as an attempt to abolish claims accruing under an Act of Congress presents no substantial question as to whether it also conflicts with the Federal Act.

V

Section 13A of the state rent law is unconstitutional because it retrospectively deprives Petitioner of property and deprives Petitioner of the just compensation established by the Act of Congress and thus violates the due process clause of the Fourteenth Amendment.

ARGUMENT

POINT I

The Sharkey Law is unconstitutional because it violates the supremacy clause Article VI(2) of the U. S. Constitution.

Preliminary Statement

The Court of Appeals held the Sharkey Law invalid on December 29, 1949 (*F. T. B. Realty Corp.* v. *Goodman*, 300 N. Y. 140), as violative of the City's Home Rule Powers without State Sanction. The Validating Act (Chapter I, Laws of 1950, State of New York), supplied the necessary State approval but does not cure any other Constitutional defects. Moreover unconstitutionality of the Validating Act (see Point III, *infra*), again renders the Sharkey Law ineffective without supporting validation.

Neither the Constitutionality of the Sharkey Law or of the supporting validating Act presents any substantial question for review in the light of the Court's construction of the Sharkey Law. The Court held that the Local Law establishes (R. 55): "* * * an intention to override and defeat the rent fixing formula of the Federal Act." Any claim that a Local Law which intends "to override and defeat" a Federal Law is not in conflict with such Federal Law therefore becomes obviously frivolous. As will be seen *infra*, all claims of Petitioners and of the City are premised on their own peculiar versions of construction of the Federal Law. One of the grave shortcomings of all these claims is that the Court of Appeals construed *not the Federal Law*, but *the Local Law*. Not only is the construction of the Local Law by the State's Highest Court

traditionally conclusive, but in the light of *that construction of the Local Law*, no substantial question for review remains. Since Petitioners and the City have pressed these claims, however far fetched they may be, we shall dispose of them here and demonstrate that no further review is warranted.

It must also be noted that after all these Petitions seek to raise issues dealing with the remnants of a controversy which once existed between the Federal and Local Authorities while the Federal Law was in operation in New York. The State's Highest Court after careful review has unanimously settled the controversy upon construing these State Statutes and as so construed held them invalid. Has this Court ever reviewed much less reversed the Highest Court of the State where that Court has stricken down its own State's Statutes? Has this Court ever questioned the construction by the State's Highest Court of State Statutes which upon such construction established self-evident violations of the Supremacy Clause? Are such questions now that Federal Rent Control has been supplanted in New York really of sufficient importance to warrant review by this Court?

a. *The Sharkey Law constitutes the attempted exercise of local legislative power in a field preempted by an Act of Congress.*

The Sharkey Law is inoperative because Congress in the enactment of the Housing and Rent Act of 1947, and amendments thereto (61 Stat. 193 *et seq.*), has exercised its prerogative of preempting the legislative field and therefore the City of New York was deprived from legislating in the rent control field as a matter of law.

Bethlehem Steel Co. et al. v. *N. Y. State Labor Rel. Board*, 330 U. S. 767 (1947);

Case v. *Bowles*, 327 U. S. 92 (1946);
Cloverleaf Butter Co. v. *Patterson*, 315 U. S. 148 (1942);
Hines v. *Davidowitz*, 312 U. S. 52 (1941);
Rice v. *Santa Fe Elevator Co.*, 331 U. S. 218 (1947);
Testa v. *Katt*, 330 U. S. 386 (1947).

The legislative history of the Federal Act clearly shows affirmative Congressional intent to prohibit the incursion of Municipal Rent Control Legislation into the field whether as a substitute for, an adjunct to, or a dual competitor with the Federal Law.

It has previously been contended by proponents of the Sharkey Law that the doctrine of Congressional Legislative preemption is not applicable because the provision for local exclusion in the 1946 Price Control Extension Act (60 U. S. Stat. 664, *supra*)[8] was not specifically prescribed in any of the Housing and Rent Acts. (Petitioner Tenant implies the same argument, see Tenant's Petition p. 8.)

The answer seems quite plain. From January 30, 1942 to June 30, 1946, the Federal Price and Rent Control Statutes contained no provision for Federal preemption or local exclusion, yet the Administration of the Federal Law operated as the sole rent and price fixing authority. Its preemption was acknowledged and so enunciated by this Court in *Case* v. *Bowles*, 327 U. S. 92, at 99.[9] The provision for local exclusion in Section 2d of the 1946 Act (see note 8, *supra*) merely embodied the doctrine of *Case* v. *Bowles*. The elimination of the provision for local exclusion in the

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8 60 Stat. 664 Sect. 2d "* * * Such housing accommodations shall not be subject to rent control by any state or local government."

9 *Case* v. *Bowles*, 327 U. S. 92, 99:

"Congress clearly intended to control *all prices and all rents*." (Emphasis supplied.)

1947 and 1948 Housing and Rent Acts is no different than the Legislative situation obtaining for the 4½ year period January 30, 1942 to June 30, 1946. Finally the enactment of Section 204(j) (notes 10-12, *infra*) in the 1949 Housing and Rent Act (61 Stat. 193 as amended by 63 Stat. 21) clearly enunciates the policy of Congress for local option solely consistent with the pattern enunciated therein. This detailed pattern for achieving local control or decontrol without provision for City Rent Control either as an alternative to, a complement for or a dual competitor to Federal Control, makes it abundantly clear that Congress intended Federal Control to be supplanted only by State Control (Section 204(j)(1));[10] or by State Decontrol (Section 204(j)(2))[11] or by City Decontrol (Section 204(j)(3)).[12 13]

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10 Section 204(j)(1) provides:

"J(1): Whenever the Governor of any State advises the Housing Expediter that the Legislature of such State has adequately provided for the establishment and maintenance of maximum rents, or has specifically expressed its intent that State Rent Control shall be in lieu of Federal rent control, with respect to housing accommodations within defense-rental areas in such State and of the date on which such State Rent Control will become effective, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rent controls under this Act, as amended, with respect to housing accommodations within such State shall be terminated as of the date on which State rent control is to become effective."

11 "J(2) If any State by Law declares that Federal Rent control is no longer necessary in such State or any part thereof, and notifies the Housing Expediter of that fact, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. at the same time all rent controls under this Act as amended, with respect to housing accommodations within such State or part thereof shall be terminated on the fifteenth day after the receipt of such advice. As used in this subsection the term 'State' means any State, Territory, or possession of the United States."

12 "J(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town or village, upon receipt of a resolution of its governing body adopted for that purpose in accordance with

Under the familiar principle of *inclusio unius, exclusio alterius* Congress clearly did not intend Cities to have any authority beyond that conferred in Section 204(j)(3) to decontrol, and obviously did not intend the confusing condition of a City Local Law competing with the Federal Law, and exercising the power "to override and defeat" the Acts of the Federal Government.[14]

A further curious proposition advanced by the proponents of the Sharkey Law which requires passing comment is the claim that preemption may never be implied and at any rate does not apply except under the Commerce Clause. This Court's decision in *Bethlehem Steel Co.* v. *N. Y. State Labor Board,* 330 U. S. 767 disposes of the claim that preemption may not be implied in legislation of this type. As was stated by Mr. Justice Jackson at p. 772:

> "It long has been the rule that exclusion of state action *may be implied* from the nature of the legislation and the subject matter, although *express declaration of such result is wanting.*

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applicable law and based upon a finding by such Government reached as the result of a public hearing held after 10 days' notice, that there no longer exists such a shortage of rental housing accommodations as to require rent control in such city, town, or village: Provided, however, That such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter."

13 Further confirmation of this intention is portrayed in the 1950 Extension and Amendment to the Housing and Rent Act (61 Stat. 193 as amended in 1950) whereby Cities are permitted to decontrol, *but are not permitted to enact City rent control.*

14 *Cf.* The pronouncement by this Court in *Cloverleaf Butter Co.* v. *Patterson,* 315 U. S. 148 at 156:

> "Where the United States exercises its power of legislation so as to conflict with a regulation of the State, either specifically or by implication, the state legislation becomes inoperative and the Federal Legislation exclusive in its application."

and at p. 775:

> *"Thus if both are upheld two administrative bodies are asserting a discretionary control over the same subject matter,* conducting hearings * * * They might come out with the same determination, or they might come out with conflicting ones as they have in the past * * * *But the power to decide a matter can hardly be made dependent upon the way it is decided."* (Emphasis supplied.)

The claim that preemption applies only under the Commerce clause almost answers itself. The doctrine of preemption has been upheld to make the Workmen's Compensation Acts of the States inoperative in Admiralty;[15] to exclude the operation of local insolvency Statutes when Federal Bankruptcy jurisdiction has been invoked;[16] to exclude States from legislating with respect to Alien Registration.[17]

Moreover to deny the existence of authority in Congress to preempt the field of rent control is to contend that while preemption may be asserted under the Commerce Clause, it does not apply under the War Power, the gravest power which the Congress possesses.[18]

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15 *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149 (1920).

16 *International Shoe Co.* v. *Pinkus*, 278 U. S. 261 (1929).

17 *Hines* v. *Davidowitz*, 372 U. S. 52, 66-68:

> "And where the Federal Government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation * * * states cannot inconsistently with the purpose of Congress, conflict or interfere with, curtail or *complement* the federal law, or *enforce additional or auxiliary regulations.*" (Emphasis supplied)

18 The Housing Expediter contended in the Court of Appeals that the Federal Act preempted the field, and in an official Interpretation (See Stat. Supplement B) dated June 30, 1950 re-emphasized that the Federal Government claimed exclusive jurisdiction over the establishment, maintenance and adjustment of maximum rents in New York for all rental periods up to April 30, 1950.

b. ***The Sharkey Law is unconstitutional because it conflicts with the Federal Act.***

The Court of Appeals construed the Sharkey Law as evidencing an intention to "override and defeat" the Federal Law. The correctness of the Court's decision becomes self-evident upon comparison of the following provisions of the two statutes:

1. There is conflict between the policy of the Federal Act as compared with the policy of the Local Law. (Section 201(b) of the Federal Act enunciates the policy of providing "prompt adjustments" for owners suffering hardships. Section U41-7a of the Local Law enunciates the policy of imposing additional restrictions.)[19]

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19 Section 201(b) of the Federal Act provides:

"Declaration of Policy

* * * * *

"Such restriction should be administered with a view to *prompt adjustments* where owners of rental housing accommodations are *suffering hardships* because of the inadequacies of the maximum rents applicable to their housing accommodations and under procedures designed to *minimize delay* in the granting of necessary adjustments * * *" (Emphasis supplied)

Section U41-7a of the Local Law provides:

"It is hereby declared to be the policy of the City to impose certain *additional restrictions* * * * *upon increases in rents for apartments* in the City." (The italicized words were amendments to existing laws imposed by Local Law 73.)

The Court of Appeals construed this Policy in *F. T. B. Realty Corp.* v. *Goodman*, 300 N. Y. 140 as follows at p. 148:

"* * * The council of the City in accordance with the Policy declared in subdivision a) has imposed pre-requisite 'additional restrictions' upon the right of a landlord to evict a tenant from an apartment in the City. * * *

"* * * the restrictions upon the right to evict tenants and the restrictions upon rent increases were regarded by the city council as being equally essential to the declared purpose of their local law. Hence the one set of restrictions cannot be separated from the other except by a remodeling of the law on a scale which as we believe would be beyond the judicial power."

2. There is conflict between the maximum rent provisions of the Federal Act as compared with the maximum rent provisions of the Local Law. (Section 204 b(1) of the Federal Act establishes maximum rents at the maximum rent determined June 30, 1947 by the Emergency Price Control Act of 1942 as amended plus or minus applicable adjustments. Section U41-7c of the Sharkey Law establishes maximum rents at the rate charged March 1, 1949.)[20]

3. There is conflict between the adjustment provisions of the Federal Act and the adjustment provisions of the Local Law.[21] The Housing Expediter in commenting upon this conflict in the adjustment provisions stated in his brief to the Court of Appeals (p. 12) (which we here adopt):

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20 Section U41-7c so far as here material states:

"c. *Rents not to exceed maximum.* It shall be unlawful for any person to demand, accept, or receive from any tenant for the use or occupancy of any apartment a rent therefor greater than the rent which was being received by the landlord for said apartment on March 1st, nineteen hundred forty-nine, unless the commission shall by appropriate order authorize the collection of a higher rent for said apartment."

21 Section 204b1 of the Federal Act directs as follows:

"The Housing Expediter *shall*, by regulation or order, make such individual and general adjustments in such maximum rents * * * *as may be necessary to remove hardships or to correct other inequities* * * * In making and recommending individual and general adjustments to remove hardships or to correct other inequities, the Housing Expediter and the Local Boards *shall observe the principle of maintaining maximum rents* for controlled housing accommodations, so far as practicable, *at levels which will yield to landlords a fair net operating income* from such housing *accommodations* * * *" (*The provision was exhaustively debated in Congress* as digested in Appendix A *infra.*)

Section U41-7c of the Local Law provides in part as follows:

"The commission is hereby authorized to adjust the rent of any apartment within the city of New York, due and payable therefore after March first nineteen hundred forty-nine, *to such amount as it may deem just and reasonable consistent with the emergency* * * *" (All Emphasis supplied)

"It is enough that what may be 'just and reasonable' in the mind of the Commission, may be wholly unrelated to what is a 'fair net operating income' or an adjustment necessary to remove hardships under the Federal Act and regulation (Cf. Bethlehem Co. v. State Board, 330 U. S. 767, 772). Under the phrase 'just and reasonable' in the local law, free as it is from any definition, the Commission could, if it so desired, ignore any or all of the factors which Congress directed should be given due consideration in making rent adjustments." [22]

4. There is conflict between the eviction provisions of the Federal Regulations issued under authority of Section 209 of the Federal Act[23] and the eviction provisions of Section

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22 Section 204 (b)(1) prescribes the following standards in the Federal Act:

"In determining whether the maximum rent for controlled housing accommodations yields a fair net operating income from such housing accommodations, due consideration shall be given to the following among other relevant factors: (A) Increases in Property Taxes: (B) unavoidable increases in operating and maintenance expenses; (C) Major Capital improvement of the Housing Accommodations as distinguished from ordinary repair, replacement and maintenance; (D) Increases or Decreases in living space; (E) substantial deterioration of housing accommodations, other than ordinary wear and tear, or failure to perform ordinary repair, replacement or maintenance."

23 Section 209 of the Federal Act provides:

"Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit * * * (including practices relating to recovery of the possession) * * *"

The Expediter's Eviction Regulation (14 Fed. Reg. 1868, 1869) permits eviction for non-payment of the Federal Maximum rent, unless contrary to a lease.

Section U41-7d of the Sharkey Law provides:

"Evictions. No tenant shall be removed from any apartment by action or proceeding to evict or to recover possession, by exclusion from possession or otherwise, *nor shall any action or other proceeding be commenced for the collection of any rent greater than the rent due and payable on the first* day of March, nineteen hundred and forty-nine, or for non-

U41-7d of the Sharkey Law. (While the *Teeval* case is an action at law as distinguished from a proceeding to evict, the applicable provision of the Sharkey Law applied to both proceedings to evict and actions to collect.) The Housing Expediter not only raised this point before the Court of Appeals but adverted thereto in his amendment 209 to the Controlled Housing Rent Regulation 15 FR 282, as follows:[24]

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payment of such greater rent, unless the commission has certified that such rent for the *non-payment of which* the removal is sought, or *for the collection of which judgment is demanded,* has before the commencement of such action or proceeding been certified as just and reasonable consistent with the emergency by the commission." (Emphasis supplied)

24 The Housing Expediter in issuing Amendment 209 to the Controlled Housing Rent Regulation, enunciated in his Statement of considerations reproduced in Statutory Supplement B, issued January 12, 1950:

"It has come to the attention of the Housing Expediter that certain local authorities claim the power and authority to regulate rents for housing accommodations which are subject to Federal Rent control, and to prohibit eviction of tenants for failure to pay more than the rent ceilings fixed by such local laws, on the basis that where the rent ceilings imposed by the local law are lower than the maximum rents established under Federal Law no conflict with Federal law is involved * * *

"The Housing and Rent Act of 1949 and its legislative history clearly show that Congress in controlling rents for housing accommodations intended that landlords be relieved of hardship and assured of a fair net operating income and that adjustments for these purposes and to correct other inequities shall be made promptly and with a minimum of delay. It is the judgment of the Housing Expediter that the establishment of rent ceilings by local law lower than those established by Federal regulation, or by adjustment orders issued thereunder, would be violative of these purposes of the Federal Act and would therefore be clearly in conflict with that Act. Even where the local law makes provision for adjustments by local rent control authorities, there is no assurance that such adjustments would be granted where increases have been ordered under Federal Law, or that such adjustments, if granted, would be equal to the adjustments ordered under the Federal law. Doubt and controversy as to which standards should govern on the determination of rent adjustments would create confusion for both landlords and tenants. At best the effect of such local rent control laws would be to require landlords to duplicate their efforts in obtaining adjustments, thus creating extensive delay in an area of rent regulation on which Congress has specifically stated that promptness is one of its basic objectives."

"Where a local rent control law includes provisions prohibiting the removal or eviction of a tenant for failure to pay a rental which is within the maximum rent established or ordered under Federal law, but is in excess of a lower rent ceiling fixed by the local law, such restraint on removal or eviction is equally in conflict with the Federal Law, for its effect is to nullify the maximum rents established by, and the adjustments ordered under, the Federal law."

5. There is conflict between the Federal Act and the Local Law insofar as Section U41-7 l ~~(see note 14, supra)~~ of the Sharkey Law makes punishable by fine or imprisonment, conduct lawful under the Federal Law. This section subjects a landlord to criminal sanctions for demanding, receiving or accepting the maximum rent established under Federal Law.[25]

This Court has stricken down as invalid State and Local Statutes which did not approach the clash existing in the case at bar.

Board v. *Hearst Publications,* 322 U. S. 111, 123 (1944);

Cloverleaf Butter Co. v. *Patterson,* 315 U. S. 148 (1942);

Hill v. *Florida,* 325 U. S. 538, 543 (1945);

Plankinton Packing Co. v. *Wisconsin Employee Relations Board,* 338 U. S. 953 (1950);

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25 *Cf.* This Court in *Hill* v. *Florida,* 325 U. S. 538 (1945) struck down a Florida Statute which purported to create penal sanctions for conduct lawful under the National Labor Relations act (p. 542):

"But here this Agent has been enjoined and if the Florida Law is Valid he would be found guilty of a contempt for *doing that which the Act of Congress permits him to do.*" (Emphasis supplied)

Rice v. *Santa Fe Elevator Co.*, 331 U. S. 218 (1947);
U. S. v. *Alleghany County*, 322 U. S. 174, 183 (1944);
U. A. W. v. *O'Brien*, 339 U. S. 454, 70 S. C. 781.

The claims that a local law which so intends to "override and defeat" the Federal Law does not conflict therewith are so frivolous as to be virtually an imposition on this Court.

The City of New York in the Court of Appeals and the other proponents of the Sharkey Law have contended that no conflict exists because the Local Law merely established lower rents, namely "A ceiling within a ceiling", and that the Sharkey Law was in effect merely an "aid to enforcement" of the Federal Law. Thus it is further contended that the Congress merely established "maximum rents", and that the Federal orders were "permissive", and thus did not prohibit the City from administering its law on a lower rent level, so long as this did not "pierce the Federal ceiling". So also does the City suggest that its law merely added an additional requirement and that the City Commission might well come out with the same result as the Federal Government.[26]

Thus Petitioner Tenant states that "nothing in the situation calls for a floor under rentals" (p. 7); and that "a lowering of the rent ceiling by a local authority does not

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26 *Cf.* This Court speaking through Mr. Justice Jackson in *Bethlehem* v. *State Board*, 330 U. S. 767 at 775 held:

"But the power to decide a matter can hardly be made dependent upon the way it is decided."

Moreover the official records and final report of the City Commission disclose that (1) no regulation was issued until December 12, 1949 and (2) adjustments were granted to only 68 units and those only where Landlords had supplied additional services.

stand 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' (*Bethlehem Steel Corp.* v. *N. Y. Labor Relations Board,* 330 U. S. 767, 773)" (p. 8); that "The Statute (Federal Act) bars rents 'greater than the maximum rent' and only an interlarding of this language to make it read 'greater or less than the maximum rent' can conceivably extend it into providing that the ceiling over rentals is also a floor under them or is a 'rent fixing' as the Court of Appeals calls it" (p. 9); that "The extensive regulations issued under authority of the Act (Federal Act) do no more than deal with the fixing or modifying of a maximum rent and do not authorize increases in rent * * * it is the conceptual error of the Court of Appeals that these new or raised ceilings constitute increases * * *" (pp. 9, 10).

The State puts the argument this way (No. 307): "We think that the Court of Appeals has misinterpreted the true nature of the Expediter's adjustment of maximum rents" (p. 10); "Fixing of the maximum rent merely sets an upper limit. It does no more. In no way can the Housing and Rent Act, or the regulations issued thereunder, be read as saying that rents are *fixed* at the maximum level. They simply state that rents may not *exceed* that level" (p. 11).

"The Federal Act is nothing more or less than a prohibition against demanding or accepting more than the maximum fixed by the Expediter * * * the policy and objective of the Federal Legislation is in no way defeated or interfered with, *if the landlord agrees to accept a lesser rent,*[27]

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27 The statement "if the landlord agrees to accept a lesser rent" is a direct albeit undoubtedly unintentional misstatement of the problem. The question is whether a Landlord may be *compelled* to accept a rent lower than the lawful Federal rent during rental periods under Federal operation. Obviously he could by lease or agreement take less. In the case at bar he accepted the Sharkey Law rent *without prejudice.* The opinion below states at 301 N. Y. 358 "Having accepted these smaller rent payments 'without prejudice' to its asserted right to collect the increased amounts * * *"

or if a local law prescribes additional limitations within the Federal ceiling" (State p. 12, emphasis supplied, see note 27).

"The action of local authorities in placing a *lower* ceiling on rents cannot in any way be said to be 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' *Hines* v. *Davidowitz,* 312 U. S. 52, 67 (1941)" (State p. 12).

Not only are these claims absurdly frivolous to a degree that could be entirely ignored if not made by responsible State and Local Government officials but they entirely miss the import of the Court of Appeals decision. These claims are addressed to attempted misinterpretations of the Federal Law, whereas the Court of Appeals quite simply construed the Local Law as intending to "override and defeat" the Federal Act. The holding that a law "so read" conflicts with the Federal Law normally would not even merit discussion.

The most charitable view of all these contentions is to designate them as an interesting exercise in semantics and catch-phrases. Yet since they have apparently been advanced to this Court in all seriousness despite the unanimous construction of the Local Law by the Court, it is necessary to dispose of these word games once and for all.

The language of the Statute itself and the debates in Congress (see appendix *infra*),[28] coupled with the Con-

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28 Senator Sparkman stated at page 3346 of the Congressional Record:

"If the owner showed that he was operating at a loss, under the terms of the previous law he was automatically entitled to *an increase in the rent* sufficient to prevent his sustaining a loss. We go beyond that and say that when he shows the cost of operating and maintaining the property then it shall be the duty of the Expediter to *increase his rent* (*Ed. Note* no mere ceiling here) not merely sufficiently to keep him from sustaining a loss, but to break even and then get a fair return above that."

ference Report[29] make it foolish further to contest the fact that Congress was concerned with raising the income of landlords suffering hardship to reflect a return above expenses found "fair" by the Housing Expediter and not by a Local Rent Commission. The Statute itself requires observance of the principle of "*maintaining maximum rents • • • at levels which will yield* to landlords a fair net operating income" (Section 204(b)(1)). The word "maintain" as defined in the American College Dictionary means "to keep in existence; preserve; retain." The word "yield" is defined as "to produce; to bear; to give a return." Can there be any doubt that a Local Law which keeps rents at

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Page 3347 (Sparkman):

"Suppose the expense is $300.00 and suppose the rent he is receiving is $275.00. Under the law as it stands now *his rent would have to be increased to $300*; but under this provision the Expediter would not stop at $300 but would have *to increase his rent* to a fair figure above that. We do not spell that out but *we expect the Expediter to devise regulations to assure every owner the right to receive a fair net operating income.*" (Emphasis supplied)

29 Text of the Conference Report is set forth at page 3360, Cong. Rec. 1949 as follows: (concerning the fair net operating income provision)

"The provision in the conference substitute is patterned on the language contained in the House Bill. As did the House provision, it replaces the provision of the present law which provides that in the making of adjustments to remove hardships, due weight shall be given to the question whether or not the landlord is suffering a loss in the operation of the housing accommodations. *This provision of existing law is objectionable because it seems to imply that a maximum rent for housing accommodations is sufficient if the landlord is merely breaking even in the operation of the housing accommodations. The conference substitute approaches the problem in a positive manner, by requiring observance of the principle of maintaining maximum rents for controlled housing accommodations so far as is practicable at levels which will yield to landlords not merely a net operating income but a fair net operating income.*" (Emphasis supplied)

Senator Sparkman, author of the fair net operating income provision and chairman of the Rent Control subcommittee of the Senate Banking and Currency Committee stated at page 3436 (March 29, 1949):

"We are saying further 'Do not stop simply at the point where he no longer sustains loss. Lift it on up to the point *where he is receiving a fair return from the rental of his property.*" (Emphasis supplied)

an amount lower than that found sufficient to produce a fair net operating income, *prevents* the Federal Law from *maintaining* maximum rents at a level sufficient to *yield* the income prescribed by Congress and thus conflicts with the expressed intention of Congress?[30]

Can it be seriously argued that Congress really intended the Federal Law to establish mere upper limits and at the same time intended to permit Local Laws not only to duplicate every action of the Federal Expediter at the same or lower levels without regard as to how far below the *yield* necessary to the *maintenance* of a Fair Net Operating the owner might be relegated? The question obviously answers itself and it surely is not a substantial one.

Little need be said about the City's suggestion that the Sharkey Law was merely an aid to enforcement of the Federal Law. If the Local Law merely established penalties for conduct *unlawful* under Federal Law, that would be an aid to enforcement (*Cf. People* v. *Lewis,* 295 N. Y. 42).

So too must fail the argument, that the Local Law is valid so long as it is more restrictive against the regulated owner. Stripped of the niceties of advocacy, this proposition baldly means that landlords must submit to the burdens of the Federal Act, but are barred from availing themselves of the benefits which Congress has intended

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30 The Housing Expediter disposed of the "ceiling within a ceiling" argument in his brief to the Court of Appeals (p. 32) as follows:

"Congress not only directed the Housing Expediter to establish maximum rents, but ordered him to fix those rents at not less than an amount such as would assure the landlord a fair net operating income. When that provision was included in the Act, the ceiling ceased to be a ceiling only, and became a floor as well (It might also be argued that in establishing maximum rentals, Congress was for practical purposes establishing minimum rentals as well, since landlords in a tight market could be expected to charge the maximum permitted by law)."

for them. Conversely and at the same time it enables tenants to derive the benefits of the Federal Act, but allows them to escape its accompanying adjustment provisions. The New York Court of Appeals in *Wasservogel* v. *Meyerowitz*, 300 N. Y. 125 (involving a challenge to the retroactivity provisions of the orders of the same Federal Administrator), disposed of this contention as follows (p. 132):

> "* * * no property or vested right of the statutory tenant is taken when his rent is raised. A tenant under a lease may, when that express lease ends, move or stay. If he stays, he is exercising a privilege granted him by law, and *with the benefits thereof he must bear the* burdens."

In *Rice* v. *Santa Fe Elevator Co.*, 331 U. S. 218,[31] this Court rejected the contention that a local Statute does

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31 *Cf. Hines* v. *Davidowitz*, 312 U. S. 52, 66, where this Court said:

(p. 66)

"And where the federal Government, in the exercise of its superior authority in the field, has enacted a complete scheme of regulation * * * states cannot inconsistently with the purpose of Congress, conflict or interfere with, curtail or *complement the federal law, or enforce additional or auxiliary regulations.*" (Emphasis supplied)

Cf. Cloverleaf Butter Co. v. *Patterson*, 315 U. S. 148, where this Court said:

(pp. 168-169)

"It is said that the state and the United States have *worked cooperatively in protecting consumers* * * *; that any action by the State aids the policy of both*: * * * and that therefore a harmonious federal-state relationship should not be hampered. * * * Nothing could be more fertile for discord, however, than a failure to define the boundaries of authority. Clashes may and should be minimized by mutual tolerance; but they are much less likely to happen when each knows the limits of its responsibility."

not conflict so long as it is more restrictive than the Federal Act. The State claimed the right to fix just and reasonable rates on the theory that the Secretary of Agriculture was not given power to fix rates at all under the Act, but merely had the right to suspend or revoke licenses if unreasonable or exorbitant charges were made. It was the claim of the State there as here that *if it reduced the Federal rates, there would be no conflict.*[32] This Court held, however (at p. 236):

> "The test, therefore, is whether the matter on which the State asserts the right to act is in any way regulated by the Federal Act. If it is, the Federal scheme prevails *though it is a more modest, less pervasive regulatory plan than that of the State.*"

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(169)

"To uphold the power of the State of Alabama to condemn material in the factory while it was under federal observation and *while Federal enforcement deemed it wholesome would not only hamper the administration of the Federal Act, but would be inconsistent with its requirements.*" (All emphasis supplied)

32 This Court noted in the *Santa Fe* case at page 232:

"At first blush that construction of the Federal Act has great plausibility. It preserves intact the Federal system of warehouse regulation, leaves the State free to protect local interests, and strikes down State power only in case what the State does in fact dilutes or diminishes the federal program."

POINT II

The Sharkey Law is unconstitutional because it violates the due process clause of the Fourteenth Amendment to the U. S. Constitution.

a. ***The Local Law is invalid as an arbitrary exercise of the police power.***

The Sharkey Law was enacted by the City of New York on October 7, 1949, after recommendation by the City Council Committee on General Welfare (see R. 55). The policy and purpose of the Local Law as construed by the Court both in the decision below and in *F. T. B. Realty Corp.* v. *Goodman,* 300 N. Y. 140, 148, was to place "additional restrictions" upon evictions and "increases in rent" (see note 19, *supra*). The policy of limiting "increases in rent" was found by the Court of Appeals in the *F. T. B.* case, *supra,* to be coequal with the purpose of limiting evictions.

It is anomalous and arbitrary to found an emergency for the purpose of invoking the police power upon the results flowing from the lawful acts of the Federal Government.[33] The Federal Act froze rents at the latest pre-inflationary date because its purpose was to prevent inflationary increases in rent, and at the same time provide for supervised increases consistent with the purposes of the Act. The Local Law, however, froze rents as of a date already controlled by Federal Law because its alleged purpose was to prevent, "override and defeat" the increases provided by such Federal Law to relieve hardships

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33 The appropriate way to review the determinations of the Federal Agency was by administrative appeal pursuant to Rent Procedural Regulation #2 (14 F. R. 5271) and thereafter by judicial appeal to the appropriate Federal District Court. Teeval's tenants did indeed take such an administrative appeal, but after its denial no judicial review to the District Court was taken.

and inequities. Invocation of the police power for this purpose is foreign to the concepts of due process in the Fourteenth Amendment.

Moreover as of the date of enactment of the Sharkey Law less[34] than 1% of New York City rental units had been affected by the fair net operating income provision. Basing an emergency either upon its effect upon less than 1% of the affected units,[35] or upon the results of the lawful acts of the Federal Government is violative of due process.[36] As this Court held in *Chastleton* v. *Sinclair*, 264 U. S. 543, at page 547:

> "The Court is not at liberty to shut its eyes to *an obvious mistake* when the validity of the law depends upon the truth of what is declared."

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34 Exhibit E (R. 40) contains a report of the Housing Expediter showing that there are 1,800,000 rental units in the City of New York of which only 13,945 had received formula increases as of December 31, 1949, or less than 1%.

35 We will show *infra* from the official records of the Federal Agency that the total number of adjustments under the fair net operating income provision for its entire year of operation in New York applied to only 2% of the controlled dwelling units.

36 The report of the State Legislative Rent Commission (McKinney's Session Law Service, 1950, pp. 595-602) itself charges the absence of study to support the Sharkey Law and questions its validity at p. 597:

> "The political excursions of the New York City Officials into the field of rent controls immediately prior to municipal election campaigns casts some doubt upon the purity of their motives. Notwithstanding motives or purposes, the attempted addition of dual controls by invalid local rent laws served only to compound confusion and to mislead and disturb tenants. * * * *Without study or understanding of the problem* the efforts of the City have been 'ineffective, inefficient and wasteful' (see Legislative document 1949 #52). To avoid further muddying of the rent control waters, the State validated the New York City local laws after the courts had declared them unauthorized and invalid. There has always been doubt that even the State could validate the New York City local laws which have been struck down by the Courts. The Court

b. ***The Local Law is unconstitutional because it deprives Respondent Teeval of the just compensation intended by the Congress.***

When the Housing Expediter pursuant to Congressional authority establishes, maintains and adjusts maximum rents, he prescribes the just compensation to which the landlord is entitled as the measure of being regulated. As this Court held in *U. S.* v. *Commodities Trading Corporation,* 339 U. S. 121, at page 125:

> "We think the Congressional purpose and the necessities of a wartime economy require that ceiling prices be accepted as the measure of just compensation so far as that can be done consistently with the Fifth Amendment."

Viewed in this light it seems clear that if the ceiling price (or rent), established by Federal Law is the "just compensation" to which the U. S. Constitution entitles the Landlord, then any price or rent below that Federal rate which the Landlord is compelled to accept is not "just compensation" but "confiscation."

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of Appeals and the Federal District Court are wrestling with that problem at the present time.

During any period of time that rent controls were being imposed by the Congress the Commission looked upon such federal law as the supreme law of the land and read literally the provisions of the supremacy clause of the U. S. Constitution (Article VI, #2). The founders built well and wisely when they wrote into the federal Constitution in 1787 the provision which prohibits laws inconsistent with and contradictory to those the Congress is authorized to enact. They doubtless envisioned the uncertainties and confusions which two inconsistent provisions of law on the same subject would produce."

POINT III

The Validating Act (Chapter I, Laws of 1950, State of New York) is unconstitutional thus rendering Local Law 73 invalid without its support.

a. ***The Validating Act retroactively deprives Respondent Teeval of property without just compensation and without due process for such retroactive deprivation.***

Petitioner has been a statutory tenant since September 30, 1949 (R. 48). For the months of October, November, December 1949, the Sharkey Law deprived Respondent of collection of the maximum rent prescribed in the Federal order. When on December 29, 1949 the Court of Appeals held the Sharkey Law invalid on State Grounds it *a fortiori* established that the bar which had prohibited Teeval from demanding, accepting or receiving the Federal rent for October, November and December 1949, had been removed and in law never existed. On January 1, 1950 Teeval demanded rent at the Federal rate from October 1949 through January 1950 (R. 17; ff. 49-50; Exhibit D). At this date the only statute which prescribed Petitioner's tenancy and maintained him in occupancy was the Federal Act. The Tenant having accepted the benefits of the statutory tenancy was required to acquiesce in its burdens.[37] The right to the Federal rate for such months having accrued as of January 1, 1950, the attempt of the Validating Act enacted January 10, 1950 to resuscitate the Sharkey Law retroactively and thus retrospectively to divest these accrued installments of increase is inconsistent with Constitutional guarantees of due process.

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37 *Wasservogel* v. *Meyerowitz*, 300 N. Y. 125 at 132.

Ettor v. *City of Tacoma*, 228 U. S. 148
Forbes Pioneer Boat Line Co. v. *Board of Commissioners*, 258 U. S. 138

Since the retrospective operation of the Validating Act is void it renders nugatory the entire Statute because there is no separability clause and no basis for voiding part of the Statute while leaving the balance unaffected. Since the Validating Act is itself unconstitutional this renders the Sharkey Law void because the Court of Appeals has already held that the Local Law cannot stand alone without validation.

The Court correctly held Section 13A of the State Rent Law unconstitutional.

Preliminary Statement

Analysis of the Court of Appeals decision holding Section 13A of the State Rent Law unconstitutional indicates that this part of the decision likewise leaves no substantial Federal question for review. The Court held that the Municipal Court has jurisdiction to entertain claims for arrears of rent (R. 58) and that the Legislature had no "power" to deprive the State Courts of jurisdiction to adjudicate claims arising by operation of the Federal Law. The Court of Appeals has repeatedly held that the State Courts do not have "power" to revise the operations of a Federal Agency. In *Wasservogel* v. *Meyerowitz*, 300 N. Y. 125 at page 133, Judge Desmond, speaking for the unanimous Court held as follows:

> "In Matter of Schmoll Inc. v. Federal Reserve Bank, 286 N. Y. 503, 509, 37 N. E. 2nd 225, 226, 138 ALR 1187, we said that *no State Court may* 'control the manner in which a Federal Agency performs or attempts to perform its functions and duties under the Tariff

Act or other Federal Statute where the Federal Government has exclusive jurisdiction.' The attempt by the State Courts in the cases before us to hold invalid this Federal Administrative order, is nothing less than an assertion of control of the manner in which the Federal rent office performed the function assigned to it by Congress."

If the State Courts do not have jurisdiction directly to review the operations of the Federal Government, and the State's Highest Court rules that the Legislature has no "power" to confer this right indirectly, that would seem to be the last word on the question.

Moreover the Court construed Section 13A as "an attempt by a State to abolish" rights created by Congress (R. 58). Is there any doubt that a State Law which "attempts to abolish" rights or liabilities accruing under Federal Law is in conflict with such Federal Law? Does this raise any substantial question for review by this Court? Since claims as to the Court's alleged errors in this regard are, however, pressed by Petitioners we shall dispose of them completely.

POINT IV

Section 13A is unconstitutional because it violates the supremacy clause (Article VI(2)) of the U. S. Constitution.

The State in enacting Section 13A has assumed the invalidity of the Sharkey Law,[38] but has assumed under guise of the Police Power to bar Teeval access to the State Courts for enforcing collection of the Federal rents which

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38 See Report of Legislative Rent Commission (36) *supra* "There has always been doubt that even the State could validate the New York City Local Laws which have been struck down by the Courts."

validly accrued prior to May 1, 1950, but were illegally barred during that time by the Sharkey Law. If the Sharkey Law constituted an illegal conflict with the Federal Act, it is difficult to perceive how Section 13A conflicts any less merely because its operation is purportedly subsequent to, rather than concurrently with the Federal Act. If the Court of Appeals and the Federal Government are therefore correct in holding that the Local Law was in conflict with the Federal Statute, this is because the Sharkey Law was a rival on the same field of operation—that field is obviously a period in time, namely the rental periods from March 1, 1949 to April 30, 1950. Is the conflict any less merely because the State attempts to focus its effect after the Federal operation has ceased to function but upon the same "field" of operations? A field of Federal Supremacy. If conflict exists as not only Teeval but also the Housing Expediter has contended and the Court of Appeals has determined, it is because the Local Law did attempt to exercise control over rentals for the very same months that they were subject to Federal Control (March 1, 1949 to April 30, 1950 with respect to New York City generally, and October 1949 to April 30, 1950 with respect to Teeval in particular). Since Section 13A of the State Law attempts to cast its shadow backwards over the very same rental periods it seems clear that here too conflict exists.

In attempted justification of Section 13A the State in its Petition contends the provision was enacted to prevent "a chaotic eviction situation"[39] (p. 7) which might

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39 Not only is the *Teeval* case a simple action at law for money due and nowhere involves the question of eviction, but the State Rent Administrator (for whom the State Attorney General is Counsel) by Amendment 8 to the Regulation promulgated August 14, 1950 (after the decision below) has prohibited evictions for refusal to pay these accruals. Official copies of the Amendment will be supplied in Statutory Supplement B hereto. The

result from a determination of invalidity of the Sharkey Law; that the result of the Court of Appeals decision is to compel 40,000 Tenants to pay these accruals "at the pain of eviction"[40] (p. 9). The Court of Appeals is charged with error in holding (1): "that the increase in maximum rent authorized by the Housing Expediter imposed absolute liability upon the tenants to the very limit of the ceiling"; (2) that the Supremacy Clause bars the State from preventing collection for refusal to pay "the Court of Appeals has erred in construing the Supremacy Clause as an absolute bar to the State's exercise of its police power in dealing with a local situation *after* the Federal Government has expressly yielded the field to State Control" (State p. 10).

The State relies for authority upon familiar cases upholding exercise of the Police Power in matters of contract (although none retroactive in effect, as a lease drawn before Rent Control providing for a rental above the maximum during the subsequent periods under rent control)[41] (State p. 13). The State's principal argument con-

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Deputy Administrator in a letter to Counsel for Teeval dated September 11, 1950 has interpreted this amendment as applying not merely pending the proceedings in this Court: "Your query in substance is whether the purpose of Amendment No. 8 was to prohibit these evictions only during the pendency of any appeal to the United States Supreme Court.

> "Neither Amendment 8 nor the Statement of Considerations accompanying it contains any language to indicate that it is to be effective only until final determination by the U. S. Supreme Court."

There is therefore no problem of eviction involved. Teeval does not propose to challenge this regulation, and the eviction issue used as a legal crutch would seem to have to wait such a challenge.

40 We will discuss *infra* the limited impact of the decision, affecting as it does approximately 2% of controlled rental units and submit in the Appendix the Official figures of the Housing Expediter also submitted to the Court of Appeals.

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Marcus Brown Holding Co. v. *Feldman*, 256 U. S. 170 (1921)
Levy Leasing Co. v. *Siegel*, 258 U. S. 242 (1922)
Twentieth Century Associates v. *Waldman*, 294 N. Y. 571 (1945)

tends (State p. 14): "The assumption is that if the landlord and tenant had voluntarily entered into an agreement for the payment of the higher rental, it could be voided by the State under its police power, but simply because the Federal Government wrote the lease for the parties (and that is the best view from the landlord's standpoint, which can be taken in the nature of the 'right') the agreement is put out of reach of the police power."[42] The State's main legal authority is the Federal Portal to Portal Act of 1947, 61 Stat. 84-90, after which Section 13A was patterned.

The State objects to the distinction drawn by the Court of Appeals that here the State Legislature instead of the Congress abolished rights created by the Congress (State p. 14): "Rights granted by Government we submit have no greater inviolability in this respect than those obtained by private contract."[43]

Petitioner Tenant (No. 306) contends that Section 204J of the Federal Act gave the State complete freedom of

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42 This argument is an obvious contradiction in terms, as between a "voluntary" agreement entitling the tenant to occupancy, and the operation of the Federal Statute which compelled Teeval to acknowledge the statutory tenancy. As the Court of Appeals well said in *Wasservogel* v. *Meyerowitz*, 300 N. Y. 125 at 132:

> "But no property or vested right of the statutory tenant is taken when his rent is raised. A tenant under a lease may, when that express lease ends move or stay. If he stays he is exercising a privilege granted him by law, and *with the benefits thereof he must bear the burdens, including that created by the danger that Government may allow his landlord to charge a higher rental and that retroactively.*" (Emphasis supplied)

43 The Court of Appeals held 301 N. Y. at 367 (R. 58)

> "But there is an essential difference between abolition by Congress of rights created by it and an attempt by a State to abolish such rights. Under our system of Government, Federal Laws are supreme and cannot be repealed, abrogated or made unenforcible by State action (see *Testa* v. *Katt*, 330 U. S. 386 and cases there cited)."

action, that Section 13A operates prospectively only (Tenant p. 6); that subsequent to April 30, 1950 there can be no conflict with the Federal Law whose operations have ceased in New York (Tenant p. 11); that the Court of Appeals arbitrarily divorced Section 13A from the balance of the Statute (Tenant pp. 11-13);[44] that the Section "did no more than maintain the status quo as it existed May 1, 1950 * * * the permissive increases in the ceiling allowed by the Housing Expediter constituted no more than paper orders insofar as the landlords and tenants were concerned since the higher amounts were actually rendered uncollectible by local law prior to May 1, 1950" (Tenant p. 13);[45] that the Court erred in limiting the power granted States by Section 204J (Tenant p. 14) and that since Congress could itself have abolished these increases (according to Petitioner) Section 204J really gave States the power to do likewise because the Federal Law had no further effect after May 1, 1950.

Petitioner relies for principal authority upon *Fleming* v. *Rhodes*, 331 U. S. 100[46] (Tenant p. 17) and seeks to

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44 Such a question of construction is traditionally left to the determination of the State's Highest Court. Moreover the State admits (State p. 7):

"This section (13A) although part of the general rent law, *is sufficient unto itself.*" (Emphasis supplied)

45 This argument ignores entirely that Section 13A was premised on assumed invalidity of the Local Law (Sharkey Law).

46 *Fleming* v. *Rhodes*, 331 U. S. 100 dealt merely with suspension of an owner's right to possession previously accrued, it did not cancel the tenant's liability for rent. Moreover the possessory right accrued solely because of a temporary lapse in Federal Law and the lapse was terminated by the Congress (*not by the State Legislature*). The situation is not dissimilar to suspension of the remedy to foreclose a mortgage without in any way impairing the debt.

distinguish Section 204F (the survival provision)[47] as not applying to termination by means of Section 204J (Tenant pp. 19-20).

Before disposing of these various contentions it is well to place the Federal increases which allegedly created the "emergency" purportedly enunciated by Section 13A in perspective. There are 1,800,000 rental units in New York City which were under Federal Rent Control (R. 40, Exhibit E, Column I). The appendix (p. xx) contains the tabulation of the Housing Expediter showing that 36,500 increases were issued under the fair net operating income Section 5a18 of the Federal Regulation (15 F. R. 282; R. 48-49)[47a] for the entire year of operation, thus affecting a mere 2% of the City's controlled units.[48] An additional 4,300 increases were based on Section 5a12 to relieve solely increased expenses.[49 50]

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47 Section 204 F of the Federal Act (61 Stat. 193 as amended from April 1, 1949 to June 30, 1950) provides:

> "The provisions of this title shall cease to be in effect at the close of June 30, 1950, or upon the date of a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this title is not necessary because of the existence of an emergency, whichever date is the earlier; *except that as to rights or liabilities incurred prior to such termination date,* the provisions of this title shall be treated as still remaining in force *for the purpose of sustaining any proper suit or action with respect to any such right or liability.*" (Emphasis supplied)

47a Congress in extending the Federal Act in 1950 (61 Stat. 193 as amended in 1950) continued provisions for the fair net operating formula thus establishing Congressional approval of the Expediter's actions.

48 The tabulation discloses that the average increase was $7.80 per month and about 11%. Since the Sharkey Law was operative from October 1949 to April 1950 (or seven months) this means that on the average each affected unit has at issue a little more than ¾ *of one month's rent* (11% of one month's rent multiplied by 7).

49 In the companion case of *Leighton* v. *Jawrower*, 301 N. Y. 368-369 (R. 59-60) decided simultaneously herewith by the Court of Appeals the increase was $1.32 per month.

50 The State Rent Administrator in his Statement of considerations to Amendment 8 to the State Regulation (39 *supra*) estimated the number of increases involved at "upwards of 34,000."

The Petitioners have affixed an inarticulate meaning to Section 204J1 of the Federal Act. The Section specifies in part that:

> "• • • *At the same time* all rent controls under this Act as amended, with respect to housing accommodations within such State *shall be terminated as of the date on which such State rent control is to become 'effective'.*" (Emphasis supplied.)

The plain meaning of these words is that Federal controls "shall be terminated" and not terminated "backwards" and State Rent Control "is to become effective" not effective "backwards". The Congress was scrupulously careful with its language to make certain that the controls would be continuous—the one succeeding the other—but not *simultaneous,* either prospectively or *retrospectively.*

One complete answer to petitioners' strained contentions which really should not further burden this Court is the specific provision of Section 204F of the Federal Act (note 47 *supra*) to the effect that with respect to "rights or liabilities incurred *prior to such termination date,* the provisions of this title shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any such right or liability."

Petitioner Tenant's contention *supra* that this Section is not applicable to cases of termination of Federal control by Section 204(j) seems hardly worth the consideration of this Court. Can it be seriously contended that a Tenant of the State of X, where controls expire because of expiration of the Act by its terms has a surviving claim for treble damages against his landlord resulting from overcharges occurring during the period of Federal operation, while the Tenant of the State of New York has

none because of decontrol by virtue of Section 204(J)? The proposition would seem to answer itself.[51]

It must also be noted that even absent Section 204F, the State Law provision is in express conflict with the Federal Survival Statute (1 U. S. C. A. 109; 61 Stat. 633).[52]

Support of Petitioners' contentions would establish precedent for the following strange and anomalous results:

1. A State or Local Law enacted after expiration of a Federal Statute could reach backward into the period of Federal operation and change its accomplishments. Specifically in the price and Rent Control field it would sanction the operation of such Statutes *to increase prices and rents retroactively* into the period of Federal operation. It would grant authority to the State of New York to enact a law increasing all rents by 10% *retroactive to March 1, 1949.*

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51 The Housing Expediter continued after April 30, 1950 to process administrative appeals by Landlords and Tenants against orders issued prior thereto (See Letter from Robert A. Sauer, Act. Gen. Counsel in Stat. Supp. B) because:

"It is the position of this Office that in such cases 'the savings clause' contained in Section 204F of the aforementioned Act confers authority and jurisdiction upon the Housing Expediter to determine the appeal."

52 1 U. S. C. A. 109 provides in part:

"The expiration of a temporary statute shall not have the effect to release or extinguish any penalty forfeiture, *or liability* incurred under such statute unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper *action* or prosecution for the enforcement of such penalty, forfeiture or liability."

Cf. Section 13 a 2 of the State Rent Law provides:

"No person shall be *subject to liability* in any *action* or proceeding commenced prior to or after this subdivision takes effect * * *"(Emphasis supplied)

2. A State or Local Law enacted after the period of Federal Operation could cancel violations of the Federal Act occurring during the period of Federal operation. Thus if Teeval had overcharged Petitioner by $35.00 per month from October 1949 to April 1950, the State of New York could prohibit Petitioner from instituting an action for treble damages based on the Federal Act for violations of the Federal Law.

3. A State or Local Law simply enunciating that the results of the Federal Act have created an emergency could thus assist its citizens to avoid obligations arising out of the Federal Act if they have been astute enough to evade its responsibilities during the life of the Federal Law (or have had the protection of invalid local laws during the life of the Federal Law).

Viewed in proper perspective Petitioners' attempts to absolve the provisions of Section 13A from conflict with Federal Law are without merit and deserve but scant attention.[53]

POINT V

The retrospective operation of Section 13A is unconstitutional because it retroactively deprives Respondent Teeval of rentals which lawfully accrued prior to the effective date of the State Rent Law in violation of the due process clause of the Fourteenth Amendment.

a. Section 13A is based upon a declaration of emergency premised upon 1. The operations of the Federal Act; plus 2. The enactment of the invalid Local Law on October 7, 1949; plus 3. The enactment of the "Validating Act"

53 It must also be noted that the cancellation of Petitioner Tenant's debt and liability conflicts with the Federal Bankruptcy Acts which have exclusive jurisdiction in this field. (See *International Shoe Co.* v. *Pinkus*, 78 U. S. 261.)

(which was ineffective to "validate" the Local Law) plus 4. The probable decision of invalidity of such local law. The Legislature of the State has no power to premise a declaration of emergency upon the results of the lawful operation of the Federal Government.[54] The Federal Housing Expediter is responsive to the directives of the Congress which passed the Federal Law, and not to the will of the State Legislature.

b. It is strange indeed to contend that when Congress has acted under its Emergency War Powers, the results of that action may legally form the basis for the State Legislature to enunciate a new emergency. To assert—as did the Legislature—that a decision of invalidity of the Sharkey Law would create "unexpected liabilities" is difficult to take seriously. Invalidity of the Sharkey Law was virtually assumed by the Governor as well as the Legislature. On signing the Validating Act, the Governor said:[55]

> "The Federal Government argued before the Court of Appeals that even if the State should validate the City Law, it would be unconstitutional as an attempt by the City to set its power above that of the National Government. There is great force to this argument by the Federal Government and *I have doubts as to the Constitutionality of the Legislation* which the City has presented. Nevertheless because the Court of Appeals did not pass upon these questions, I shall approve the measure and the validity of the measure can then be properly determined by the Court." (Emphasis supplied.)

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54 *Cf.* The Court of Appeals stated, 301 N. Y. at 367 (R. 58):

"The power which the Legislature assumed to exercise in enacting Section 13A of the State Rent Control Statute does not exist."

55 (McKinney's Session Law Service, Laws of N. Y., 1950, p. 67.)

The State Legislative Rent Commission[56] itself doubted the validity of the Sharkey Law. Obviously the pyramiding of unconstitutional laws "validated" by the Legislature cannot form the basis for a declaration of emergency by the same Legislature. As this Court held in *Chastleton* v. *Sinclair*, 264 U. S. 543, 547:

> "* * * a court is not at liberty to shut its eyes to an *obvious mistake* when the validity of the law depends upon the truth of what is declared." (Emphasis supplied.)

c. The retrospective operation of Section 13A violates the Due Process Clause of the Fourteenth Amendment for the identical reasons advanced in Point III *supra* against the Validating Act. It is moreover distinguishable from the Portal to Portal Act of 1947 (61 Stat. 84-90) on which the State relies in the following ways:

1. Congress which enacted the Fair Labor Standards Act (52 Stat. 1060) could itself modify that Act, but the State Legislature can neither modify an Act of Congress nor abridge rights and liabilities arising thereunder (the distinction drawn by the Court of Appeals R. 58).

2. Congress having established the fair net operating income as the measure of "Just Compensation",[57] under

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56 See Note 36 (McKinney's New York Session Law Service, 1950, p. 595 at 597).

57 *Cf. U. S.* v. *Commodities Trading Corp.*, 339 U. S. 121 at 125:

"We think the Congressional purpose and the necessities of a wartime economy require that *ceiling prices be accepted as the measure of just compensation* so far as that can be done consistently with the Fifth Amendment" (Emphasis supplied)—There is doubt therefore whether even Congress could modify the just compensation for past transactions.

Federal Rent Control, cancellation of this measure is deprivation of "Just Compensation".

3. The Portal Pay was declared by Congress to be an "unintended" and "incidental" benefit granted not to the class subject to regulation (the Landlord in the Rent Act, or the employer in the Labor Standards Act) but to the class receiving the primary benefit of regulation.

CONCLUSION

Petitioners' applications for writs herein should be denied and this Court should not be burdened with any further review:

1. The unanimous decision of the Court of Appeals is in accord with the overwhelming weight of legal precedents enunciated by this Court.

2. The basic questions are local in nature and were three times reviewed by the State's Highest Court. The case is concerned solely with past transactions and does not raise any continuing unliquidated liabilities.

3. This Court has not previously reviewed (much less reversed) the decision of the State's Highest Court when it struck down a State Statute as subservient to the supremacy clause.[58]

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58 *Cf.* The language of the Court of Appeals in striking down the Sharkey Law (p. 365): "So read, the above quoted provisions of the validated Sharkey Law *are at war with* Article VI of the Federal Constitution * * *" is not dissimilar to Mr. Chief Justice Vinson's recent determination in *U. A. W.* v. *O'Brien*, 70 S. C. 781 (p. 783):

"Without question the Michigan provision conflicts with the exercise of Federally protected labor rights. *A State statute so at war* with Federal law cannot survive." (Emphasis supplied)

4. There is considerable doubt whether substantial Federal questions really exist, since the Court's decision follows almost automatically from its own interpretation of the State Statutes. The Court interpreted the Sharkey Law as intending to "override and defeat" (R. 55) the Federal Law. The issue whether a Local Law, that *intends* to "override and defeat" the Federal Law is in conflict with the Federal Law presents no substantial question.

The Court *interpreted* Section 13A as "an attempt by a State to abolish" rights created by Congress (R. 58). The issue whether a State Statute that *intends* to "abolish" rights created by Congress, is in conflict with the Federal Law also presents no substantial question. The Court also held that (R. 58): "The power which the Legislature assumed to exercise in enacting Section 13A of the State Rent Control Statute does not exist". The question of interpretation of State Statutes and of the Power of the State Legislature is traditionally left to the State's Highest Court.

We submit that the judgment of the Court of Appeals in so far as questioned in Petitions No. 306 and No. 307 is clearly correct that no substantial questions for review exist and that the petitions should be dismissed.

Respectfully submitted,

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APPENDIX A

Submitted herewith is a digest of the Senate and House Debate on the Conference Report for a fair net operating income (Cong. Rec. March 28, 1949, pp. 3344-3348) (Cong. Rec. March 29, 3401-3404). (*All emphasis is supplied.*)

P. 3344:

Mr. Tobey: "Will the Senator kindly advise us what the factors are as adopted by the conference which result in the determination of a fair return."

(Senator Maybank then reads the substance of the provision.)

Mr. Ferguson: "I notice the Senator has read from the report or from the bill itself as an indication that there is to be allowed income on the money invested."

Mr. Maybank (Chairman of Senate Committee on Banking and Currency): "*Anyone who has any income invested should certainly receive a fair return* • • •"

"The Conference provision is that *the landlords should* receive a fair net operating income. *No one on the committee would for one moment deny them that.*"

P. 3345:

Mr. Maybank: "The report provides for a fair net operating income. Net operating income means gross income less all costs of operation, including repairs, maintenance, taxes, insurance and the like.

Mr. President, in order to assure a fair net operating income *the Expediter would be required in making adjustments, to see that the* landlord received a gross

income which exceeded all such operating costs by an equitable amount."

P. 3345:

Mr. Maybank: "I might say that the landlord would be *entitled* to a fair income over and above operating costs. The method of computing that in individual cases would be left to the decision of the local rent office, or the Housing Expediter, or whoever it might be."

Mr. Ferguson: "Very well. Is a depreciation allowance going to be made?"

Mr. Maybank: "There *will be* a final fair return over and above operating costs."

Mr. Ferguson: "* * * Does it propose to allow him only a fair amount of the actual out-of-pocket operating costs?"

Mr. Maybank: "No; the conference report bill allows him all operating costs including taxes, utility expenses and other items, and then he is allowed a fair net operating income over and above all operating costs."

Mr. Ferguson: "* * * Therefore the owner gets nothing above the actual out of pocket operating costs?"

P. 3346:

Mr. Maybank: "Of course he *gets a fair income.* That is the main thing the House had in mind. *A landlady gets a fair income.* * * * the Senate tried to do the same thing by the two 5 per cent increases."

Mr. Ferguson: "When the operating costs are spelled out *does the owner get anything else?*"

Mr. Maybank: "Yes, he gets a fair net operating income."

Mr. Ferguson: "Over and above the out-of-pocket operating costs?"

Mr. Maybank: "Yes, that is what the bill provides."

Mr. Ferguson: "* * * All I am trying to find out is what the bill will do and what we may expect Mr. Woods, as the Expediter to do?"

Mr. Maybank: *"He is going to give everyone a fair net operating income* and he is going to take into account what we have spelled out in the bill. I will permit the Senator from Alabama to answer the question. (Ed. Note: This refers to Senator John Sparkman of Alabama, Chairman of the Rent Control subcommittee of the Senate Banking and Currency Committee and a member of the Conference Committee which worked out the fair net operating provision and signed the Conference Report.)

Mr. Sparkman: "Mr. President, I want to explain the compromise agreement as best I can in a couple of minutes. Of course the Senate adopted a formula which we knew was easily understood, easily applied. While we recognize the fact that as it went across the board it would work some injustice, some inequities, not be sufficient for some, be a windfall for others, at the same time we thought that because of the ease with which it could be understood, the ease with which it could be applied, it would compensate for those factors.

"After struggling for a long time we were absolutely unable to obtain any agreement. We made proposal after proposal to the House in an effort to solve the difficulty. Finally this language was written out and

after long and careful discussion and bickering back and forth it was agreed to.

"This is what we hope to do: Take a piece of rental property; let the owner who wants relief show the expense to which he is put each year in the operation of the property, including deterioration or depreciation, and including all the normal operating expenses; then compare that with the rent which he is collecting. *The only provision in the existing law relating to that subject is a guaranty that the owner should not sustain a loss.* That has been the law right along.

Mr. Ferguson: "In other words—"

Mr. Sparkman: "Let me proceed that I may make a connected statement. If the owner showed that he was operating at a loss, under the terms of the previous law *he was automatically entitled to an increase in the rent sufficient to prevent his sustaining a loss. We go beyond that and say that when he shows the cost of operating and maintaining the property then it shall be the duty of the Expediter to increase his rent not merely sufficiently to keep him from sustaining a loss, but to break even and then get a fair return above that.*

"I know that the Senator is going to ask 'what is a fair return'. We do not spell it out. We naturally expect the Expediter to devise a workable plan under which *the owner can be assured that he will receive a fair income from his property.* We believe that it can be done."

Respondent at this point respectfully calls the Court's attention to Senator Sparkman's statement, that under the 1948 Act, *supra,* there was a "guaranty that the owner should not sustain a loss" and that the owner "was automatically entitled to an increase in the rent sufficient to

prevent his sustaining a loss". The provision of the 1948 Act, *supra*, which is designated a "guaranty" is no more mandatory than the 1949 Act. The 1948 Act (Sec. 202(b)(1)), *supra*, put it this way:

> "Due weight shall be given to the question whether or not the landlord is suffering a loss in the operation of the housing accommodations."

The 1949 Act in Section 204(b)(1), *supra*, refers to "levels which will yield to landlords a fair net operating income". If the 1948 Act contains a guaranty, so does the 1949 Act.

It is further significant that Senator Sparkman does not at all concern himself with petitioners' magic concept of "maximum rents". He quite simply states all through the debate "it shall be the duty of the Expediter *to increase his rent*". This language recurs; neither the word "maximum" rent, nor its concept appears anywhere through these debates.

P. 3347:

> Mr. Ferguson: "• • • the owner of the land has $2,000. invested we will say in the land. He has $5,000 invested in the house. Does the Senator propose to give him only 2 per cent, which is the amount which the house actually depreciates? At the end of 50 years he would have no house. Am I to understand that all he is going to get is the privilege of placing a new house on the land and that he will get no return on the land?"
>
> Mr. Sparkman: "• • • In order to arrive at net operating income he would subtract his out-of-pocket costs of operation, plus depreciation on the house. Then he would compare that with the amount of rent he is receiving. Suppose the expense is $300. and suppose

the rent he is receiving is $275. Under the law as it stands now *his rent would have to be increased to $300;* but under this provision the Expediter would not stop at $300. *but would have to increase his rent to a fair figure above that. We do not spell out what that fair figure is,* but we expect the Expediter to devise regulations to *assure every owner the right to receive a fair net operating income.*

Cong. Rec. March 29, 1949

P. 3433:

Mr. Sparkman: "Let me say if I may interrupt that we have tried to write into this conference report or agreement *assurance of a fair income* * * *"

P. 3436:

Mr. Taft: "What does the Senator mean by 'fair'? Does he mean fair in relation to value of the property?"

Mr. Sparkman: "My idea would be that the Expediter in each area by a study as to comparable rents, the historical background of the rents, in the particular area, would decide what would be a fair return for the rental of any particular house, and the rents would be adjusted that way.

"As a matter of fact the Senator from Ohio has just said that there is similar language—not completely similar but somewhat similar—in the regulations with reference to hardship cases. But the limitation in the existing law to which the Senator from Ohio vigorously objected when the bill was on the floor, was inserted to make certain that the owner would not sustain loss. Now we have lifted that out. We are saying further, 'Do not stop simply at the point where he no longer

sustains a loss. *Lift it up to the point where he is receiving a fair return from the rental of his property*'."

P. 3436:

Mr. Ferguson: "Very well. As I understand then, an owner of property in the United States, after the bill is passed, will receive nothing except his out-of-pocket expenses in operating the building or the property, plus a reasonable depreciation. In other words if the bill is enacted into law and the law continues to be in operation for 30 years, what a man would end up with is the value of his property, that is the property on the land, the building, and he would receive nothing as a profit for his ownership of the land. Is that correct?"

Mr. Sparkman: "No, that is not correct."

Mr. Ferguson: "Very well. What would he receive?"

Mr. Sparkman: "Let me answer that a little more fully if I may. A man who has a piece of rental property which he is renting certainly has certain expenses in connection with the operation and maintenance of the property—such as taxes, upkeep, insurance, depreciation—expenses which are necessary in order to keep the rental property in good shape and rentable condition. Every dime of that expense is counted as operating expenses. He collects so much rent. He can deduct every dime of that expense from the rent he receives. Then if he thinks he is not receiving as much return as he should receive, he can petition the Expediter, and the Expediter is directed under this provision to allow him *a rental which will assure a fair net operating income;* and net operating income means the gross income from his rent, minus all the expenses of opera-

tion and maintenance and minus depreciation on the property."

Mr. Ferguson: "But he receives nothing so far as a profit or increment on the value of the property is concerned. He receives his out-of-pocket expenses plus depreciation, and he receives nothing else."

P. 3437:

Mr. Sparkman: *"He receives a fair income over and above the items* the Senator from Michigan has mentioned. I do not see how anything could be clearer than that. Under the law as it now stands the Expediter is directed in hardship cases to consider every single one of the factors I have mentioned and to allow the owner a rental that *will prevent him from losing anything.* There was nothing mysterious about that provision of law. That has been the law right along. No one has ever raised the question."

P. 3437:

Mr. Ferguson: "I cannot see how allowing a man depreciation is allowing him any money for the use of his property. It is only making him whole."

Mr. Sparkman: "Depreciation is included along with the various expenses of operation and maintenance, in determining whether the owner is breaking even. The present law simply requires the Expediter to see that the owner breaks even. But we go beyond that. *We say that it is not sufficient, that he must have an income over and above that."*

Mr. Ferguson: "How much?"

Mr. Sparkman: "We have left it up to the Expediter to see that the property-owner breaks even. Now we

are leaving it to the Expediter to determine *how much he ought to go above that, in order to have a fair income.*"

There follows at this point a discussion between Senator Bricker, who championed the Brown Amendment for "Reasonable return on reasonable value" in Senate Debate, Cong. Rec. March 23, 1949, pp. 3116-3123, and Senator Sparkman as to what the Expediter will do. At p. 3438 there follows this pertinent comment as to the import of legislative history:

> Mr. Bricker: "Nothing in this section would give him any guidance in determining what is a fair return or what the owner should receive above the fair operating costs of the property."
>
> Mr. Sparkman: "Mr. President let me say to the Senator from Ohio that I shall not quarrel with his interpretation if he wishes that to be the interpretation in the cold printed type; but I am sure the Senator from Ohio knows that *included in the interpretation of any law is the legislative history which was made on the floor of the Senate and on the floor of the House of Representatives* while the measure was being discussed. • • • "

P. 3439:

> Mr. Sparkman: "We do allow depreciation; although it is used not for the purpose of determining the value, but as one of the items which should be deductible *in order to make certain that the landlord is receiving a fair net operating income* • • • "

P. 3440:

Mr. Donnell: "Supposing in the case which I cited, of a $20,000 investment, with no mortgage, the Senator from Alabama owns the property outright. Suppose the rentals amount to $2,000 a year. Supposing the operating expenses are $1,750 a year. Does the Senator think on his investment of $20,000 he should be restricted to a net income of $250 or only a fraction over 1 per cent, or does he think he should be entitled to charge rentals sufficiently large to give him a reasonable return of 5 or 6 per cent on his investment of $20,000?"

Mr. Sparkman: "If the Senator wants to ask my opinion on that specific case I would certainly say that $250 net operating income would not be sufficient for that property. I certainly think it should be approximately $1,000 or $1,200; and I am quite certain that the Expediter would set the figure at such a point.

"Let me say further that there is not a community in the United States in which there cannot be worked out a fair historic *basis for the charging of rents to such an extent that the property-owner can be assured of a fair income.* We believe that can be done and we believe that the Expediter can do it. That is what we are asking him to do."

P. 3441:

Mr. Donnell: "Does the Senator consider that the landlord is entitled as a matter of elemental justice, to have his investment in his property treated as one of the items which should enter into the determination of how much rent he should charge? Does not the Senator agree with that?"

Mr. Sparkman: "Let me go a little further. On the very first day we opened hearings on rent control legis-

lation the question of fair return arose. Every member of the sub-committee without exception and I think I can say every member of the full committee, without exception was in favor of the landlord receiving a fair return, and we started trying to work out the formula."

Mr. Donnell: "Fair return on the investment?"

Mr. Sparkman: "A fair return. Regardless of whether it was on investment, the present value, or the appraised value, the members of the committee wanted the landlord to have a fair return.

"There are two very able economists on the Committee on Banking and Currency, both of whom were on the sub-committee. I refer to the able Senator from Vermont (Mr. Flanders) and the able Senator from Illinois (Mr. Douglas). If the Senator will read the hearings he will see that these two Senators started quizzing practically every witness who came before us with reference to fair return. Mr. Woods himself said 'If you can work out a formula, I am for it, but I have been unable to discover a formula that would work.'

"As Chairman of the Subcommittee in the very beginning I said to the Junior Senator from Illinois and to the Junior Senator from Vermont 'You gentlemen are the economists on the committee. I believe something can be worked out and I am designating you two to work it out.' They worked on it and each of them came up with a somewhat different formula. We met in the subcommittee, we thrashed through the matter as best we could, in an endeavor to get a provision which would be fair, which would be workable, which could be easily and quickly put into effect. The result was that we agreed upon the provision for 5 per cent on October 1 and 5 per cent on April 1. The Senator knows that the Senate agreed to that. But the House conferees would not agree to it.

"We have proceeded on the basis that we want the landlord to have a fair return. The only question that arose was how are we to determine what that fair income is? It was the considered judgment of the Committee that the formula we worked out in conference was the best we could get."

(At page 3442 Senator McClelland interposed to ask for clarification of the fair net operating provision, and Senator Sparkman replied):

P. 3442:

Mr. Sparkman: "Let me answer both questions together, and I should like to have the attention of the Senator from Arkansas. This has been answered before but unfortunately I assume the Senator from Arkansas was not on the floor at the time.

"Let me explain first the term 'net operating income'. Let me say to the Senator from Arkansas that the only significance of the word 'operating' is to exclude amortization and interest which the Senator agrees ought to be excluded. As a matter of fact, this amendment was offered in alternative language. In one form we said 'fair net income excluding amortization and interest'. But as an alternative we proposed it to the House conferees 'fair net operating income'. But the expressions are exactly synonymous. 'Fair net operating income' and 'Fair net income excluding amortization and interest' are exactly synonymous.

"If I remember correctly the Senator from Arkansas supported the Brown amendment on the floor of the Senate. We are using exactly the same words that were contained in the Brown amendment when we designate

the various cost factors that are set out. That is not our language. That is the language of the Brown amendment. Those which are enumerated are certain extra expenses or unusual expenses. We say 'all relevant cost factors'. We use that language."

Mr. McClellan: "Mr. President will the Senator yield?"

Mr. Sparkman: "May I proceed and explain what I mean by the phrase net operating income?"

Mr. McClellan: "Explain what is included in relevant."

Mr. Sparkman: "What is included in relevant?"

Mr. McClellan: "Yes, all that is included in the word 'relevant'."

Mr. Sparkman: "Yes I will do that. This is about the third time I have done so but I shall gladly do so again.

"Suppose a man owns a piece of property and he is receiving rent from it. It is costing him something to maintain and operate the property. When I name the factors I may leave out some, but I mean all cost factors, insurance, taxes, maintenance and operation, upkeep, or whatever one may want to call it; usually expenses that may occur. Those are four of the five items that are set out under the designations (A), (B), (C), (D) and (E); any expenses necessary in keeping that rental property on the market in rental condition so as to enable the owner to receive his income from it. I hope that is broad enough to cover everything that is necessary to keep the property going as rental property."

Mr. McClellan: "Mr. President will the Senator yield?"

Mr. Sparkman: "Let me finish. The owner adds all that up, and then he adds to it a certain figure for de-

preciation. We do not spell it out, but I assume that he would add the same figure that he puts in his income tax report. Then he takes the total of those figures and subtracts it from the rent he is receiving.

"The law today provides—this is the law; it has been the law for several years and the Senator from Arkansas voted for it."

Mr. McClellan: "I voted for many things during the war that I am not going to vote for in peacetime."

Mr. Sparkman: "The Senator voted for this provision last year if he voted for rent control. The present law provides that the Expediter shall take those factors into consideration and shall determine whether or not the owner is operating his property at a loss, and if he is, the Expediter must give the owner a rent increase to make certain that he does not sustain a loss."

"Now we go further. We are taking that out of the law and we are saying to the Expediter: *You cannot stop there. You must give the landlord a sufficient additional rent so that he will receive a fair income from the property.*"

P. 3443:

Mr. McClellan: "There is no requirement that the Expediter take into account the investment in allowing the owner a reasonable return on the investment."

Mr. Sparkman: "No; that is not the test."

Mr. McClellan: "Instead the words 'net operating income' are used. The owner must have a reasonable profit on that. I come back to the question which I asked."

Mr. Sparkman: "No let me correct the Senator—not a reasonable profit on net operating income. *He must have a fair net operating income.*"

Shortly following this statement the conference report was approved by the Senate and sent to the House (P. 3445). The House Debate is set forth at Pages 3401 to 3407 after Senate Passage (p. 3401 Rep. Spence states: The other body has acted first and has just passed it 78 to 11). The conference report was explained on the House Floor by Rep. Spence (Chairman of the House Committee on Banking and Currency) and Reps. Patman, Monroney of the Committee, and Rep. Buchanan.

P. 3401:

Mr. Spence: "* * * With regard to the landlords and the rights of the tenants we have provided that the landlord shall obtain a fair net operating income. That means that after he has paid all the necessary expenses of upkeep and operation of the housing accommodations, after he has paid taxes, insurance, repairs, and other charges, after an allowance has been made to him for depreciation, *he shall have a fair net income.* Certainly that is a provision that will *insure the landlord* fairer treatment than he has received under the other acts, *and will assure him, under all circumstances of a return.*

The law previously enacted provided that if he could show he was operating at a loss he might obtain relief. I think this gives him about the same rights that he had under the provision authorizing the correction of hardships. *This report is a fair report for both tenants and property-owners.*"

P. 3401-3402:

Mr. Spence: "The President wants a bill that can be enforced. He knows what would happen if there

were no rent control at this time. I know he sincerely has at heart the best interest of all the people of the United States. He may have some preferences, but I can assure you he wants this bill enacted into law, because he thinks it will benefit all of the people. I am confident that it will be so administered, that it *will give relief to thousands and thousands of people who otherwise would be the subject of imposition. At the same time it will give relief to some landlords who have not had an adequate income on their property.*"

Mr. Poulson: "I understood the gentleman to say that the Administrator had the same powers before in the case of hardships to *grant an increase* and that the powers given in this bill are not additional powers, is that correct?"

Mr. Spence: "There are additional powers. I think they are more general, and I believe the *intent of Congress is more explicitly and more definitely shown.*"

P. 3404:

Mr. Patman (in general explanation of the bill): "Mr. Speaker, this bill is much better than either the bill that passed the Senate or the bill that passed the House.

The Brown amendment, according to the way I view the Brown amendment has not been weakened. It has been strengthened instead. * * *

The Brown amendment as it is now written is just as plain as I believe any language can be written and that language is that the rents shall be set "at levels which will yield to landlords a fair net operating income from such housing accommodations".

It is submitted that here in another vital passage we have no emphasis, in fact no reference to defendants' concept of *"maximum rents"* but rather it is that *"rents shall be set"*.

P. 3405:

Mr. Patman: "I am going to insert in the Record a statement that came from the Housing Expediter's Office. In that statement an explanation was given and I think a fair explanation as to how this amendment will be executed or administered."

Mr. Kunkel: "Mr. Speaker will the gentleman yield?"

Mr. Patman: "I yield to the gentleman from Pennsylvania."

Mr. Kunkel: "That is an extremely valuable contribution and I suggest the gentleman read it to the House right now so we can know about it."

Mr. Patman: "I will read one paragraph now:

'The conference amendment would provide a much more equitable *method of adjusting rents than the one under existing law*'."

It is submitted that here again the concept is of "adjusting rents" not an upper limit, but a fixation of rent.

P. 3406:

Mr. Monroney (in general explanation of the Bill): "The second thing which I think is important in this bill is in how to adjust hardship cases. I think you could probably keep the House in session for 24 days and could not come up with any language whether it be the language of the original Brown amendment, with which amendment I was in complete agreement, or

whether it be the language brought back by the conferees.

All you can do—no matter what language you use—is *to implant in the minds of local adjusters that they now must give the property-owner a fair return on his property.*

You cannot go to utility law on establishing valuations. You cannot go to transportation law because there are 14 million properties involved here. If you try to follow that fine line of distinction you would probably deny relief to hardship landlords whom you are trying to help by a specific formula, by so encumbering machinery that no relief in deserving hardship cases could be granted due to complicated questions of fact and law."

It is submitted that despite defendants' contention that we are not in the rate-making field, Congressman Monroney's statement shows that we are in the rate-making field, that we are fixing rents, but that it is only the preciseness of the formula that for practical reasons will differ from the exactitude of rate-fixation. The principle is the same.

One of the clearest statements congressional intent is submitted near the close of the debate at

P. 3406:

Mr. Buchanan: "The conference compromise, however, *would require the Housing Expediter to assure a landlord of a net operating income that is a fair or equitable percentage above his cost. In other words instead of bringing the landlord who is operating at a loss to a break-even basis he would be required to increase his rent to an amount that would insure that he*

receives an income that is a fair percentage above his cost. Likewise as against his present method of granting hardships petitions, he would put all landlords in the same position with reference to the ratio of operating income as against cost. Net operating income would take into consideration all factors in the cost of maintenance of rental properties, excluding interest, but including depreciation.

The question might well arise as to what is the fair percentage that the Housing Expediter would be required to maintain. On the basis of surveys made by the Expediter's Office, it is apparent that landlords generally are better off today than they were prior to rent control. However A NUMBER OF LANDLORDS ARE BELOW AVERAGE AND SOME MIGHT WELL BE OPERATING AT A LOSS. THE HOUSING EXPEDITER *WOULD BE REQUIRED* UNDER the Conference substitute *to make adjustments that would bring those landlords that are well below the average or operating at a loss* to the more favorable position of the average landlord. In other words he would be required to determine what was a fair net operating income just as he would have been required under the House version to determine what is a fair return based upon the factors which were included in the House language."

APPENDIX B

OFFICE OF

THE HOUSING EXPEDITER

REGIONAL OFFICE
350 Fifth Avenue
New York 1, N. Y.

IN REPLY REFER TO:

May 4, 1950

Robert S. Fougner, Esq.
233 Broadway
New York, New York

Dear Sir:

This letter is in reply to your letter of April 30, 1950 in which you requested statistics on the number of 5(a)(1) and 5(a)(3) increases in calendar year 1949 in order to compare those increases with the number of increases issued under 5(a)(18) or the fair net operating income provision.

First of all I should like to clarify the meaning of the word "comparison" in discussing the ratio of grants between the 5(a)(18) increases and the 5(a)(1) and 5(a)(3) increases. The estimated 100,000 adjustments granted because of major capital improvements, increased services, etc., was for the calendar year 1949. The 13,945 fair net operating income increases mentioned in your letter of April 30, 1950 is for the period, May through December, 1949, since 5(a)(18) was not a part of the rent regulation prior to May 1949. Furthermore, you should be advised that the 10,627 figure is the number of grants made with reference only to multi-unit structures, and did not include

grants involving small structures. That figure has been quoted because of the publicity which centered around adjustments granted to multi-unit structures. To this figure, then, there should be added 3,318 increases granted to small structures, thereby making a total of 13,945 total increases under 5(a)(18) for the foregoing period.

It is highly significant, however, that 81.5% of all the adjustments granted during calendar year 1949 were in the categories of rents which were increased due mainly to major capital improvement and increased services. In other words, these are grants based on actual *out-of-the-pocket expenditures* made by the landlord. *What do these adjustments reflect in term of improvements to rental property and increased rental value and convenience to the tenant?* Here are some interesting figures applicable to the City of New York:

Items	Estimated No. of Units	Estimated Expenditure
Refrigerators	37,777	$ 7,555,400.00
Cook Stove	5,397	178,330.00
Stoker	67	12,983.00
Conversion—Oil	5,127	1,563,030.00
Roofs	1,484	145,583.00
Heating Plant	5,667	1,788,021.00
All Other (kitchen cabinets, and other kitchen improvements, French doors, archways, etc.)	11,940	5,163,572.00
		$16,406,919.00
Painting	71,452	6,430,680.00
Grand Total		$22,837,599.00

In closing, I should like to place the 5(a)(18) grants in proper prospective. Only 8/10 of 1% of all housing units in New York City under Federal rent control was affected by 5(a)(18) grants, which averaged $7.76 per unit per month. Furthermore, I am certain that you are aware of the unfortunate publicity on the exceptional increases which did not give a fair and accurate picture of the administration of the 5(a)(18) provision as a whole.

I trust that the information which I have given you will be of value to you, and in the event that you wish additional information I shall be glad to be of further assistance.

Very truly yours,

JOHN J. PENDERGAST
JOHN J. PENDERGAST
Regional Housing Expediter
Region II

OFFICE OF

THE HOUSING EXPEDITER

REGIONAL OFFICE

350 Fifth Avenue

New York 1, N. Y.

IN REPLY REFER TO:

May 26, 1950

Robert S. Fougner, Esq.
233 Broadway
New York, New York

Dear Sir:

Attached hereto you will please find the information requested by you this date showing a breakdown of the number of units affected by rent increases in New York City covering the period April 1, 1949 to March 31, 1950.

I trust that the information will be helpful to you, and should you require any additional data, I shall be glad to be of further assistance.

Very truly yours,

JOHN J. PENDERGAST
John J. Pendergast
Regional Housing Expediter

Attachments

OFFICE OF THE HOUSING EXPEDITER

REGION II

350 Fifth Avenue

New York 1, New York

Landlords' Petitions for Increase

April 1, 1949 to March 31, 1950

New York City:

		Units in Petitions Granted	Average $ Adjustment	% of Increase
I	5(a) 1	8,140	4.80	11.5
	5(a) 3	74,924	4.80	11.5
	5(a) 11(i)	12,950	4.80	11.5
	5(a) 11(ii)	5,895	4.80	11.5
	5(a) 19	632	4.80	11.5
	5(a) 8	2,737	4.80	11.5
	Total	105,278	4.80	11.5
II	5(a) 12 Large Structures	4,198	3.03	5.1
	Small Structures	193	4.04	9.0
III	5(a) 18 Large Structures	30,226	9.51	14.4
	Small Structures	6,342	6.31	14.7
	Total	146,237	5.60	11.67

I Increased service and facilities.

II Increased taxes and operating costs.

III Fair net operating income formula.

Office - Supreme Court
FILED
OCT 10 1950
STANLEY MORE OR

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 346.....

Cause No. 1

MORRIS JAWROWER,

Petitioner,

against

LEON LEIGHTON, MELVIN L. KRULEWITCH and ISIDOR WASSERVOGEL, as Trustees under a Declaration of Trust, dated March 27, 1936, and a Plan of Reorganization for Series B-K mortgage investments, approved by an order of the Supreme Court of the State of New York, entered December 19, 1935,

Respondents.

Cause No. 2

MORRIS JAWROWER,

Petitioner,

against

LEON LEIGHTON, MELVIN L. KRULEWITCH and ISIDOR WASSERVOGEL, as Trustees under a Declaration of Trust, dated March 27, 1936, and a Plan of Reorganization for Series B-K mortgage investments, approved by an order of the Supreme Court of the State of New York, entered December 19, 1935,

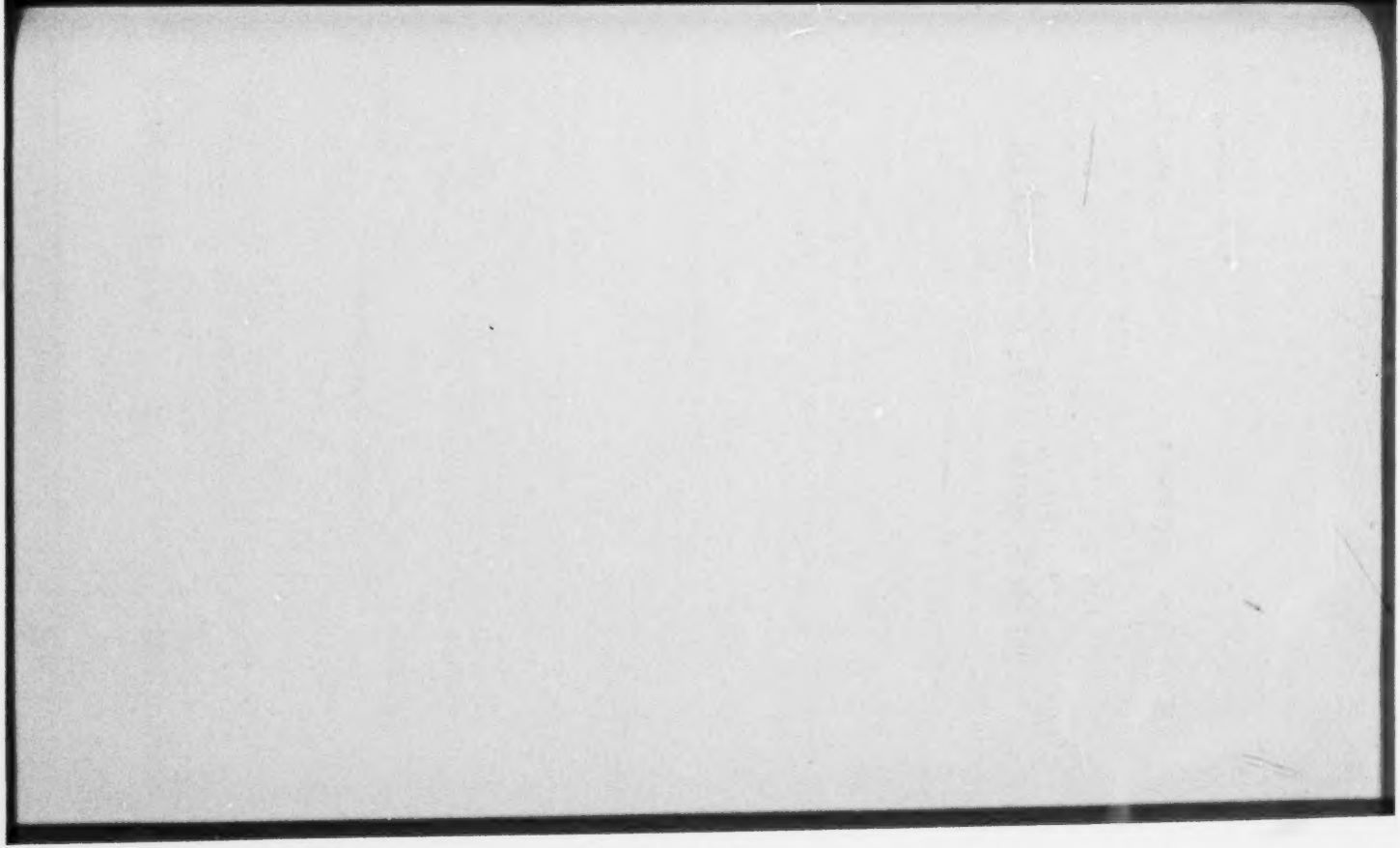
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO APPLICATIONS FOR WRITS OF CERTIORARI

BARNET KAPROW,
Counsel for Petitioners.

KRAMER & KAPROW,
Attorneys for Petitioners.

Dated: October 6, 1950.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 346

Cause No. 1

MORRIS JAWROWER,

Petitioner,

against

LEON LEIGHTON, MELVIN L. KRULEWITCH and ISIDOR WASSERVOGEL, as Trustees under a Declaration of Trust, dated March 27, 1936, and a Plan of Reorganization for Series B-K mortgage investments, approved by an order of the Supreme Court of the State of New York, entered December 19, 1935,

Respondents.

Cause No. 2

MORRIS JAWROWER,

Petitioner,

against

LEON LEIGHTON, MELVIN L. KRULEWITCH and ISIDOR WASSERVOGEL, as Trustees under a Declaration of Trust, dated March 27, 1936, and a Plan of Reorganization for Series B-K mortgage investments, approved by an order of the Supreme Court of the State of New York, entered December 19, 1935,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO APPLICATIONS FOR WRITS OF CERTIORARI

Statement

The first above-entitled cause involved the constitutionality of the New York City Sharkey Law (Local Law No. 73 of the New York City Laws of 1949, as validated by Chap-

ter 1 of the New York Laws of 1950). The second above-entitled cause involved the constitutionality of the New York State Emergency Housing and Rent Control Law (Chapter 250 of the New York State Laws of 1950), for convenience hereinafter referred to as the State Rent Law. The New York Court of Appeals struck down the Sharkey Law as validated (Cause No. 1) and also struck down that part of the State Rent Law (Section 13-a) which barred Federal rent increases due up to May 1, 1950 (Cause No. 2). In said Cause No. 2 the Court of Appeals upheld the State Rent Law insofar as its prospective provisions were concerned, that is, for the period from and after the effective date thereof—May 1, 1950.

The petitioner herein and the Attorney General of the State of New York have applied for writs of certiorari from the judgment of the Court of Appeals invalidating the Sharkey Law (Cause No. 1) and Section 13-a of the State Rent Law (Cause No. 2).* The respondent herein, by cross-petition, has applied for a conditional writ of certiorari from the determination of the Court of Appeals insofar as it upheld the constitutionality of the State Rent Law from and after its effective date—May 1, 1950. This brief is being submitted in opposition to the petitioner's and Attorney General's applications for writs of certiorari.

The Cases Involved.

On July 8, 1949, retroactive to November 15, 1948, the respondents-landlords secured a Federal rent increase of $1.32 per month (from $39 to $40.32). Cause No. 1 was a summary proceeding to dispossess the petitioner-tenant for failure to pay the increased rental of $40.32 for February, 1950 and arrears of $1.32 per month for November and December, 1949 and January, 1950. Cause No. 2 was

---

* The Corporation Counsel of the City of New York has submitted an *amicus* brief in support of the petitions.

an action to recover the Federally approved rental of $40.32 for May, 1950, plus arrears of $1.32 per month for March and April, 1950. By invalidating the Sharkey Law, the State Court of Appeals upheld the right to collect $40.32 for February, 1950 and the arrears of $1.32 for November and December, 1949 and January, 1950 (Cause No. 1). By invalidating Section 13-a of the State Rent Law, the State Court of Appeals upheld the right to collect $1.32 arrears of rental for March and April, 1950 (Cause No. 2). By upholding the State Rent Law prospectively (that is to say, for the period after its effective date on May 1, 1950), the State Court of Appeals refused to allow respondents-landlords, on and after May 1, 1950, to collect $40.32 as the rental of the apartment occupied by the petitioner-tenant.

Pertinent Provisions of Statutes Involved

1. The State Rent Law (Chapter 250 of the New York Laws of 1950), in effect (a) freezes dwelling rents in the City of New York at the March 1, 1949 levels and elsewhere in the State of New York at the March 1, 1950 levels; (b) bars rent adjustments in favor of landlords, except that it gives the Commission the power to entertain applications for adjustments (not later than December 1, 1950) in instances where expenses (before depreciation) exceed income, or where hardship results on the basis of comparability, or in cases of gross inequities; and (c) bars any claims for the differences between Federally approved rentals and local (Sharkey) Law rentals for any period prior to May 1, 1950, whether or not the Sharkey Law is upheld as valid. It is this last portion (c) of the State Rent Law which was invalidated by the Court of Appeals.

2. The Sharkey Law (Local Law #73 of the New York City Laws of 1949, validated by ch. 1 of the New York State Laws of 1950), which the Court of Appeals struck down, in

effect freezes the rent in the City of New York at the March 1, 1949 level and makes provision for adjustments "consistent with the emergency".

3. The Federal Emergency Price Control Act of 1942, as amended (U. S. Code, Title 50, Appx. Sec. 901, et seq.), for convenience hereinafter referred to as the Federal Rent Law, froze rents at 1943 levels and (by the 1949 Act) permitted adjustments "to remove hardships or to correct other inequities". The 1949 Act also provided that "In making and recommending individual and general adjustments to remove hardships or to correct other inequities, the Housing Expediter and local boards shall observe the principle of maintaining maximum rents for controlled housing accommodations, so far as is practicable, at levels which will yield to landlords a fair net operating income from such housing accommodations" (Housing and Rent Act of 1947, Sec. 204, sub. [b], Par. [1], as amended; U. S. Code, Title 50, Appx. Sec. 1894, Sub. [b], Par. [1]. The 1949 Law also set up "local option" provisions (Sec. 204j) by which State control or decontrol, or Municipal decontrol could be accomplished.

The Absence of a Substantial or Novel Question for a Review by this Court

In the City of New York, there are 1,800,000 rental units which were formerly under Federal rent control. The State Rent Administrator, in a "Statement of Considerations for the Issuance of Amendment No. 8" adopted August 14, 1950, dealing with rent and eviction regulations in the City of New York, estimated that there were about 34,000 tenants in the City of New York who were affected by Federal rent increases which were purportedly barred by the Sharkey and State Rent Laws and that, if the decision of the Court of Appeals invalidating the Sharkey Law

and Section 13-a of the State Rent Law is upheld, it would affect that number of tenants who would be liable for Federal rent increases up to May 1, 1950. The number involved, assuming that all would be involved, is less than 2% of the rental units in the City of New York, but it is unlikely that that many, or even a large proportion thereof, would be so affected, first, because numerous tenants voluntarily paid the Federal increases up through January, 1950 when the State Court of Appeals first invalidated the Sharkey Law (*F. T. B. Corp.* v. *Goodman* and *Leighton* v. *Jawrower,* 300 N. Y. 140 and 300 N. Y. 582) and, secondly, numerous tenants voluntarily paid the Federal rent increases up to May 1, 1950 after the Court of Appeals struck down Section 13-a of the State Rent Law and (for a second time) the Sharkey Law (301 N. Y. 346). The amounts involved, moreover, are not large. In the cases at bar, it is $1.32 per month from November, 1949 through April, 1950. The indication is that too much emphasis is being placed upon the number of Federal rent increases (34,000) and not upon the number actually affected and the amounts involved. The foregoing represents the practical aspects.

Petitioners' specifications of error (as to the invalidation of the Sharkey law and Sec. 13-a of the State law) are to the effect that the said laws do not conflict with the Federal Rent Law and, therefore, are not violative of the Supremacy clause of the Federal Constitution. The State Court of Appeals, however, made a specific finding in respect to the intention of the New York City Council in enacting the Sharkey law. The court found that the council intended "to override and defeat the rent-fixing formula of the Federal act" (301 N. Y. at p. 365). The same intent, it would appear, was behind the enactment of the State Rent Law. Since the said finding of the State Court will not be disturbed (*Gatewood* v. *North Carolina,* 203 U. S. 531 at 541), we should think that there

is absent here the required substantial question necessary for a review of the judgments.

Nor is a novel question presented here as to the retroactive legislation (Sec. 13-a) of the State Rent Law. (Incidentally, the Sharkey law, as validated, also contained retroactive legislation which was attacked in the State courts). This is so because this court has many times passed upon and invalidated (as the State Court did) such legislation. Some of the authorities are hereinafter cited.

The Absence of a Federal Question

The New York Court of Appeals' decision striking down the so-called retroactive provisions of the State Rent Law (Sec. 13-a) is not necessarily a decision of a Federal question. The decision, as we read it at 301 N. Y., page 367, was based on the grounds that (1) a State Court has jurisdiction to adjudicate claims for rent arrears pursuant to the New York City Municipal Court Code and that Sec. 13-a could not abolish or suspend that jurisdiction, and (2) a State Court may not interfere with a Federal directive (citing *Testa* v. *Katt,* 330 U. S. 386). The latter holding followed a prior decision of the New York Court of Appeals in *Wasservogel, et al.* v. *Meyerowitz, et al.* (300 N. Y. 125), which in turn followed *Matter of Schmoll* v. *Federal Reserve Bank* (286 N. Y. 503).

We submit, therefore, that contrary to the position taken by the petitioner-tenant that the issue involved is strictly a Federal question, the decision in respect to Section 13-a did not necessarily base itself on such grounds; it based itself on the powers of the Legislature in legislating and of the State Courts in adjudicating "in respect of claims for arrears of rent"—a State question.

The decision in relation to the Sharkey Law, although based upon Federal grounds (State grounds also having

been urged against its validity, which the Court of Appeals did not decide, 301 N. Y. at p. 365), was reached after a finding of an intent to "override and defeat" the Federal law. Moreover, the Sharkey Law, as in the case of the State Rent Law, contained retroactive provisions which touched upon State rights, as well as Federal rights. The cases hereinafter cited support the view that the retroactive provisions thereof are invalid on common law principles—a State question. Finally, Section 13-a of the State Rent Law is so tied in with the Sharkey Law in general, that if we are correct that the decision in the State Rent Law case (Cause No. 2) was not necessarily on Federal grounds, it should, we think, follow that a review of the decision of the Sharkey Law should also be denied, even though a Federal question is presented in that case.

The cases in this Court are legion to the effect that, for this Court to have jurisdiction to review the decision of a State Court, it must appear affirmatively from the Record that not only a Federal question was presented for decision to the highest State Court, but that the State Court decision of the Federal question was necessary to the determination of the cause and that the Federal question was actually decided or that the judgment as rendered could not have been given without deciding it (see *Southwestern Bell Telephone Co.* v. *State of Oklahoma,* 303 U. S. 206, at 212; *Lynch* v. *People,* 293 U. S. 52, at 54).

The judgments of the State Court are, in any event, correct and should not be reviewed.

Argument

(1) The Sharkey Law (Cause No. 1)

The Sharkey Law is invalid because (a) the Federal Rent Act preempted the field of Housing and (b) it [the

Sharkey Law] conflicts with the Federal Act (Art. VI of U. S. Constitution). A showing of either preemption or conflict would suffice (*Southern R. Co.* v. *Railroad Commission,* 236 U. S. 439, at 448; *Bethlehem Steel Co.* v. *N. Y. L. R. B.,* 330 U. S. 767, at 780).

(a) The Federal Housing and Rent Act preempted the field in relation to Housing.

The first Price Control Act of 1942 contained no provision for exclusive Federal jurisdiction. An explicit preemption provision was first enacted in the 1946 Law (Price Control Extension Act of 1946, Ch. 671, Public Law 548 of 79th Congress, Second Session). It appears as an amendment to Section 2 (b) of the Emergency Price Control Act of 1942 (50 U. S. C. A. Appx. 902 (b)). The reason for the exclusive jurisdiction provision in the 1946 Act was the deliberate purpose of supplanting the several States' Acts on rent control that were put into effect during the hiatus of Federal Rent Control that existed between June 30, 1946 (the expiration of the 1942 Price Control Act, as extended) and the enactment of the aforesaid 1946 Law on July 25, 1946.* Except for the need to supersede any new intervening State Rent Law, it was not necessary for explicit language of preemption to be embodied in the Federal Act, just as it was not found necessary to introduce it in the first Price Control measure of 1942 or the subsequent extension thereof until June 30, 1946. The intent to preempt the field was clear and no one questioned the right of Congress to legislate in the field of Housing to the exclusion of State and Local Governments.

The 1947 and 1948 Rent Acts, on the other hand, permitted eviction controls by local authorities while maintaining controls over rents and there was again general acquiescence in the supremacy of the rent fixing power

* See comment of House Conference Report, p. 1315 of U. S. Code Cong. Service, 79th Congress, 2d Session 1946.

of Congress, despite the absence of explicit words of preemption.

The 1949 Act restored the eviction control in the Expediter, strengthened rent control in other respects and set up the "local option" provisions (Sec. 204j) by which State control or decontrol, or Municipal decontrol could be accomplished. But the 1949 Act made no provisions for complementary control in either the field of rent fixation or evictions for non-payment of rent.

It is clear that preemption need not be expressed in Federal legislation dealing with matters vested in the National authority by the United States Constitution, such as in the case of commerce (see *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, at 231; and *Hines* v. *Davidowitz*, 312 U. S. 52), or as in the case of bankruptcy (see *International Shoe Co.* v. *Pinkus*, 278 U. S. 261). The same holds true in relation to actions by Congress pursuant to the war power clause of the Constitution under which the rent legislation was enacted (see *Case* v. *Bowles*, 327 U. S. 92 at 102), for, once it is established that a Federal Act is designed for uniformity and in aid of the war effort, the difference between legislation under either power disappears. Preemption under the war power clause is as much within the province of Congress as preemption under the commerce or bankruptcy clauses (see *Matter of Tartaglia* v. *McLaughlin*, 297 N. Y. 419). That a design for uniformity was the purpose of the 1949 Federal Rent Legislation, is evident from the Statement of Congressman Spence (Chairman of the House Committee on Banking and Currency, which introduced the Bill) who said, at page 2524 of the Congressional Record:

> "There must be a National pattern * * * have not faith that the local people will keep the National pattern of rent control."

The Local Option Clauses (Sec. 204j) contained in the 1949 Federal Rent Act constituted a statement of policy

by Congress that its law is exclusive until it relinquishes its power to the State or Local Government. The case of *Board* v. *Hearst Publications* (322 U. S. 111, at 123) is pertinent to the issue here under discussion. "It is an act therefore in reference to which it is not only proper but necessary for us to assume 'in the absence of a plain indication to the contrary that Congress * * * is not making the application of the Federal Act dependant on State Law' Jerome v. U. S., 318 U. S. 101, 104" (see, also, *Bethlehem Steel Co.* v. *N. Y. L. R. B.*, 330 U. S. 767, at 772-774).

(b) The Sharkey Law conflicts with the Federal Law on the subject.

The Federal Expediter, appearing as *amicus* in the Sharkey Law appeal (Cause No. 1) urged that there was irreconcilable conflict between the Federal and Sharkey Rent Laws. His opinion, it is submitted, is entitled to controlling weight (Cf. *Bowles* v. *Seminole Sand & Stone Co.*, 325 U. S. 410). And the finding by the Court of Appeals that the Sharkey Law intended "to override and defeat" the Federal Law would seem to leave no doubt that conflict exists. For that matter, the Governor of the State of New York, in his message of January 10, 1950 approving of the State Validating Act of the Sharkey Law, voiced his fears as to the constitutionality of that law (New York Times, January 11, 1950). Reservations as to the validity of the Validating Act were also shared by Counsel for the State Rent Commission (New York Times, February 9, 1950).

At any rate, the conflicts between the Federal and Sharkey laws, as urged in the State court, are as follows:

(1) The local law (Sec. U41-7.0-C) makes unlawful the collection of rent which was made lawful by the Federal law (Sec. 204b (1)); it prohibits evictions for failure to pay rent approved by Federal order (Sec.

U41-7.0-d), although evictions therefor are permitted by Federal law (Sec. 209); it imposes criminal penalties (Sec. U41-7.0-l) for actions declared legal by the Federal law; it contravenes the policy of the Federal law (Sec. 201b), which provides for "prompt adjustments" to correct hardships, by imposing "additional restrictions" (Sec. U41-7.0-a); and, by providing for rent adjustments "to such amount as it may deem just and reasonable consistent with the emergency" (Sec. U41-7.0-c), it conflicts with the Federal law which provides for adjustments "necessary to remove hardships or to correct other inequities * * * at levels which will yield to landlords a fair net operating income" (Sec. 204b (1)). The foregoing, we submit, make for conflict in violation of the Supremacy clause of the constitution.

Board v. *Hearst Publications,* 322 U. S. 111, 123;
Hill v. *Florida,* 325 U. S. 538, at 542-3;
Sinnot v. *Davenport,* 22 How. 227, 243;
M. K. & T. R'y Co. v. *Haber,* 169 U. S. 613, 623;
U. S. v. *County of Alleghany,* 322 U. S. 174, 183;
Bethlehem Steel Co. v. *N. Y. L. R. B.,* 330 U. S. 767, 776;
Cloverleaf Butter Co. v. *Patterson,* 315 U. S. 148;
Allen B. Dumont Lab. Inc. v. *Carroll,* 86 F. Supp. 813.

(2) The local law sets up City rent control in violation of the specific "local option" provisions of the Federal law (Sec. 204j), which provide that local action may be taken only to decontrol (with the Governor's sanction)—not to establish complementary control and certainly not to create a "super" control. (See *Board* v. *Hearst Publications, supra.*)

(3) The local law provides for a duplicate or repetitive process of proving the right to rent adjust-

ments "consistent with the emergency" (Sec. U41-7.0-c), the results of which are uncertain and unknown. This causes further delay (see *Bowles* v. *Willingham*, 321 U. S. 503, 520) in the face of the Federal law requirement for "prompt adjustments" (Sec. 201b). The local law, thereby, not only nullifies a Federal order but also defeats the Congressional purpose by barring landlords from availing themselves of the benefits derived from the Federal Act, after having submitted to its burdens, while tenants continue to take advantage of the Federal Act and escape the disadvantages of a Federal rent increase order. The local law would shift rent control to local officials who would not be accountable to Congress, although Congress fixed guides to be followed by its administrator—a factor which, alone, makes for conflict (*Bethlehem Steel Co.* v. *N. Y. L. R. R.*, 330 U. S. 767 at p. 776).

The cases cited by petitioners in opposition to the claim of *preemption*, in general, involve situations where Congress has expressly reserved rights to the State (as in *Rice* v. *Board of Trade*, 331 U. S. 247 and *Allen Bradley Local* v. *Board*, 315 U. S. 740); or where Congress, because it did not cover the field, has impliedly permitted States to enact complementary legislation not in conflict with the Federal Act (as in *Reid* v. *Colorado*, 187 U. S. 137 and *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188), or where all that the State did was to make the National purpose its own purpose by exerting its police powers to prevent obstruction of the Congressional purpose (as in *Gilbert* v. *Minnesota*, 254 U. S. 325 and *People* v. *Mailman*, 293 N. Y. 887).

The cases cited by petitioners in opposition to the claim of *conflict*, in general, involve local legislation which merely provided for an additional civil requirement (as in *Wallach* v. *Ross*, 298 N. Y. 806 and *Molnar* v. *Curtin*, 297 N. Y. 967),

or remedy (as in *M. K. & T. R'y. Co.* v. *Haber,* 169 U. S. 613 and *M. K. & T. R'y. Co.* v. *Harris,* 234 U. S. 412), or criminal penalty for an act that was wrongful under a superior Federal law (as in *People* v. *Lewis,* 295 N. Y. 42). There is a vast difference between such a local complementary law and a local complementary law which in effect would supersede the superior Federal Law. In the first, the local complementary law is, by its nature, procedural only and would not impose additional burdens of a nature that could be considered so severe as to result in deprivation of vested rights. In the second, the local complementary law would create a comprehensive City Rent Law upon an existing Federal Rent Act which would only impose additional severe burdens resulting in the deprivation of rights guaranteed by the Federal Law.

The entire argument of the petitioner, the Attorney General and of the *amicus,* City of New York—that no conflict between the Federal and City Laws is presented—is based on the contention that the Federal rent increase did not confer a *right* to the collection thereof, but that it was only *permissive.* In the State Court, it was conceded that if the Federal rent increase conferred a *right,* there would be conflict. As an incident to this issue, it may be pertinent to determine whether Congress intended by the 1949 Housing and Rent Act to aid both landlords and tenants or whether it was strictly an Act for the benefit of tenants. The Declaration of Policy of Congress (Sec. 201 (a) and (b) of the 1949 Act) and the legislative history (Congressional Record, March 28-29, 1949)* and the statement of the Housing Expediter of January 12, 1950 (15 Fed. Register, p. 282)* would appear to lend support to the view that Congress intended the Act to be both in behalf of landlords and tenants. This being so, the inquiry as to whether the rent increase orders under the Act conferred a right to the collection thereof should be resolved in the affirmative.

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* Printed at footnote 24 (p. 19) and Appendix A (pp. i to xix) of Teeval's opposition brief in companion case, *Stern* v. *Teeval.*

The contention that the language "maximum rents" in the Federal Act supports only a claim that Federal rent increase orders are permissive, is at best a play upon words. Nor should the issue here be decided on so exiguous a base. Instead, search should be made for the legislative intent which is often helpful to resolve the meaning and intent of a law (see *Harrison* v. *North Trust Co.*, 317 U. S. 476, at 479). So long as a tenant may not dispute the increase, there is as much right conferred on the landlord thereto as if there was an existing lease between the parties providing for the higher rental. Since the decision by the New York Court of Appeals in *Stern* v. *Equitable Trust Co.*, (238 N. Y. 267), it has been recognized that while the landlord's rights against a statutory tenant have been temporarily stayed by an act of grace of a legislative body, the tenant nevertheless has one of two choices—either to move or to remain in possession, and in the latter event, to pay the rental fixed by a constituted authority (see also *Wasservogel, et al.* v. *Meyerowitz, et al.*, 300 N. Y. 125). In that sense, therefore, the landlord has the absolute right, when the tenant decides to remain in possession, to the collection of the increased rental, fixed as it was in this case, by Federal order, for the Federal rent legislation, being an act of grace, may be modified or removed at any time by Congress.

Moreover, the claim here of petitioner, of the Attorney General, and of the City of New York that the Federal rent increase was permissive only (a question of construction, it would appear) was overruled by the New York Court of Appeals, where it was also urged; and, as already several times stated, the State Court found that the New York City Council intended to "override and defeat" the Federal law.

Finally, the notion expressed in petitioners' applications that a local law can go farther than Congress in the

control of rents (under the police power of the City) is dispelled by *Charleston & W. C. R. Co.* v. *Varnville Furniture Co.* (237 U. S. 597 at 604).

(c) The Sharkey Law is violative of the Due Process Clause of the Constitution.

The Sharkey Law contains no proper guide or norm in respect to the granting of rent increases such as contained in the Federal Rent Law. It merely empowers the Commission to adjust rents at "such amount as it may deem just and reasonable, consistent with the emergency". As such, the legislation falls short of the due process requirement of the Fourteenth Amendment. The rent adjustment provision in the Sharkey Law introduces a qualification which indicates quite clearly that the standards set out, inadequate as they are, would inevitably require fixation of rents that are less than fair and reasonable. Parenthetically, we observe that Congress has found such standards bad (see, in this connection, *Jacobs* v. *O. H. E.*, 176 Fed. 2d 338).

(d) The retroactive provisions of the Sharkey Law are invalid.

From December 29, 1949, when the State Court of Appeals first struck down the Sharkey Law (*F. T. B. Corp.* v. *Goodman* and *Leighton* v. *Jawrower*, 300 N. Y. 140 and 300 N. Y. 582), there was no local law and no barrier to the accrual of the landlord's rights under the Federal Act. These rights were the increases granted by the Expediter's order of July 8, 1949 for the months of November and December and January, 1950—$1.32 for each month—which the tenant refused to pay because of the enactment on October 7, 1949 of the Sharkey Law. These accruals had become vested rights at the time the Legislature enacted the Validating Act of January 10, 1950 (Ch. 1 of the New York

Laws of 1950). The point here made does not concern itself with the power to fix rentals for the future at amounts charged in the past. The respondents-landlords' position here is that a rent law is invalid if it deprives the landlords of the increases previously accrued and which the tenant, for one untenable reason or another, refused to pay. The situation is as if the tenant had, prior to January 10, 1950, actually paid the rent increases and then sought to recover them when the Sharkey Law become effective on that date. Such a claim would, we believe, receive short shrift. In either event, the rights—whether money in pocket or money due and owing—had vested and any effort to divest the landlords of them would be a Constitutional deprivation (see *Danzer & Co.* v. *Gulf & Ship Island R. R. Co.*, 268 U. S. 633 at 637; *Forbes Pioneer Boat-Line* v. *Board*, 258 U. S. 338 at 339-40; *Coombes* v. *Getz*, 285 U. S. 434 at 441-3; *Lynch* v. *U. S. and Willner* v. *U. S.*, 292 U. S. 571, at 586; *Ettor & Howard* v. *City of Tacoma*, 228 U. S. 148 at 155-6.

(2) The State Rent Law (Cause No. 2)

The voided Section 13-a, which is sought to be reviewed by the petitioner and Attorney General, is similar in nature to the retroactive provision of the Sharkey Law (as validated) just discussed. The argument here proceeds on the assumption that the Court of Appeals was correct in its determination that the Sharkey Law was invalid after its validation by the New York Legislature, that is, for the period January 10, 1950 to May 1, 1950, when the State Law supplanted the Sharkey Law. If, as we contend, the Court of Appeals was correct in its said determination, there would be no Sharkey Law up until May 1, 1950 and no barrier to the accrual of the respondents' rights under the Federal Act. These rights (in the cases at bar) were the increases granted by the Federal Expediter's order of July 8, 1949 for the months

preceding May, 1950 at $1.32 per month, which the tenant has not paid. These accruals had become vested rights at the time the State Rent Law became effective.

Aside from the reasons given by the State Court of Appeals, for voiding Section 13-a, additional reasons for its invalidity are the cases above cited in connection with the retroactive portion of the Sharkey Law.

There are, of course, numerous authorities supporting the right of a State in the exercise of its police power to impair contracts (such as *Home Building and Loan Assn.* v. *Blaisdell,* 290 U. S. 398; *Veix* v. *Sixth Ward B & L Assn.,* 310 U. S. 32; *Marcus Brown Co.* v. *Feldman,* 256 U. S. 170; *Levy Leasing Co.* v. *Siegel,* 258 U. S. 242, and others that might be cited). But these cases dealt with the postponement of a remedy or an impairment of an existing contract insofar as the future (that is, after the legislation) was concerned. They did not destroy existing claims for money already accrued, and that is the only question involved under this heading. The furthest any rent legislation has ever gone is, so to speak, roll back rents prospectively, that is to say, fix rents for a period after the coming into effect of the legislation at an amount less than was paid in the past; and, in doing this, the rent legislation has frequently nullified leases and contracts which, absent the legislation, would have entitled the landlord to a higher rental. But this nullification, though an interference with contract and vested rights, has been upheld only because it operated prospectively. That is the teaching of all the cases to date and this teaching is derived from the authorities which clearly indicate that an effort to do what the State Rent Law attempted retroactively must fail.

The petitioner and Attorney General contend that Section 13-a was patterned after the "Portal to Portal" Act of 1947; Wage and Hour Law (61 Stat. 84-90) and